ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates	: Case No. 2010-0722 : : Appeal from the Public : Utilities Commission of Ohio : : Public Utilities : Commission of Ohio : Case No. 09-1095-EL-RDR

APPENDIX OF APPELLEE/CROSS-APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo
(Reg. No. 0016386)
(Counsel of Record)
Lisa G. McAlister
(Reg. No. 0075043)
Joseph M. Clark
(Reg. No. 0080711)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

COUNSEL FOR APPELLEE/CROSS-, APPELLANT, INDUSTRIAL ENERGY - USERS OHIO

Richard Cordray
(Reg. No. 0038034)
Attorney General of Ohio
William Wright
(Reg. No. 0018010)
Section Chief, Public Utilities Section
Thomas W. McNamee
(Reg. No. 0017352)
(Counsel of Record)
Thomas G. Lindgren
(Reg. No. 0039210)
Werner L. Margard
(Reg. No. 0024858)
Assistant Attorneys General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Telephone: (614) 466-4397
Facsimile: (614) 644-8764
william.wright@puc.state.oh.us
thomas.mcnamee@puc.state.oh.us

COUNSEL FOR APPELLEE, PUBLIC UTILITIES COMMISSION OF OHIO

Steven T. Nourse
(Reg. No. 0046705)
(Counsel of Record)
Matthew J. Satterwhite
(Reg. No. 71972)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1606
Facsimile: (614) 716-2950
stnourse@aep.com
mjsatterwhite@aep.com

COUNSEL FOR APPELLANT/CROSS-APPELLEE, COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

Janine Migden-Ostrander
(Reg. No. 0002310)
Consumers' Counsel
Michael E. Idzkowski
Reg. No. 0062839
(Counsel of Record)
Maureen R. Grady
(Reg. No. 0020847)
Office of the Ohio Consumers' Counsel
10 West Broad Street
Suite 1800
Columbus, OH 43215-3485
idzkowski@occ.state.oh.us
grady@occ.state.oh.us

COUNSEL FOR INTERVENING APPELLEE, OFFICE OF THE OHIO CONSUMERS' COUNSEL

PUBLIC UTILITIES COMMISSION OF OHIO CASES

Public Utilities Commission of Ohio Documents and Notices of Appeal of Case Below

Other Public Utilities Commission of Ohio Cases

STATUTES

RULES

{C31957: }

ORIGINAL

IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates	: Case No. 2010-10-0722
	: Appeal from the Public Utilities Commission of Ohio
	: Public Utilities Commission of Ohio
	: Case No. 09-1095-EL-RDR

NOTICE OF APPEAL OF APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo
(Reg. No. 0016386)
(Counsel of Record)
Lisa G. McAlister
(Reg. No. 0075043)
Joseph M. Clark
(Reg. No. 0080711)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

COUNSEL FOR APPELLANT, INDUSTRIAL ENERGY USERS-OHIO

Richard Cordray
(Reg. No. 0038034)
Attorney General of Ohio
Duane L. Luckey
(Reg. No. 0023557)
Section Chief, Public Utilities Section
(Counsel of Record)
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Telephone: (614) 466-4397
Facsimile: (614) 644-8764
duane.luckey@puc.state.oh.us

COUNSEL FOR APPELLEE, PUBLIC UTILITIES COMMISSION OF OHIO

{C30680: }

NOTICE OF APPEAL OF
APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Appellant, Industrial Energy Users-Ohio ("IEU-Ohio" or "Appellant"), hereby gives its notice of appeal, pursuant to R.C. 4903.11, R.C. 4903.13, and Supreme Court Rule of Practice 2, to the Supreme Court of Ohio and Appellee, from a January 7, 2010 Finding and Order (Attachment A), a March 3, 2010 Entry on Rehearing (Attachment B), and a March 24, 2010 Entry on Rehearing (Attachment C) of the Public Utilities Commission of Ohio ("Commission or PUCO") in Case No. 09-1095-EL-RDR.

Appellant was and is a party of record in PUCO Case No. 09-1095-EL-RDR and timely filed its Application for Rehearing of Appellee's January 7, 2010 Finding and Order in accordance with R.C. 4903.10. Appellant's Application for Rehearing was denied with respect to the issues on appeal herein by the Appellee's Entry on Rehearing dated March 24, 2010.

The Appellee's Finding and Order and March 24, 2010 Entry on Rehearing approving the Application of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively referred to as the "Companies" or "AEP-Ohio") is unlawful and unreasonable in multiple respects. Specifically, the Appellee's Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable in the following respects:

A. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over PUCO Case No 09-1095-EL-RDR. The Commission lost jurisdiction over AEP-Ohio's electric security plan ("ESP") and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.

B. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.

C. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the brand new exception for the economic development rider ("EDR") from the maximum percentage increases permitted in the ESP violates the Commission's precedent and unreasonably increases customers' rates.

D. The Finding and Order and March 24, 2010 Entry on Rehearing are unreasonable inasmuch they permit AEP-Ohio to calculate the carrying costs on deferred EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.

WHEREFORE, Appellant respectfully submits that Appellee's January 7, 2010 Finding and Order and March 24, 2010 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully Submitted,

Samuel C. Randazzo, Counsel of Record (0016386)
Lisa G. McAlister (0075043)
Joseph M. Clark (0080711)
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653

COUNSEL FOR APPELLANT, INDUSTRIAL ENERGY USERS-OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Notice of Appeal of Appellant Industrial Energy Users-Ohio* was sent by ordinary U.S. mail, postage prepaid, or hand-delivered to all parties to the proceeding before the Public Utilities Commission of Ohio, listed below, and pursuant to Section 4903.13 of the Ohio Revised Code on April 27, 2010.

Joseph M. Clark
Counsel for Appellant,
Industrial Energy Users-Ohio

Marvin I. Resnik
Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street
Columbus, OH 43215

ON BEHALF OF COLUMBUS SOUTHERN POWER AND OHIO POWER COMPANY

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

ON BEHALF OF OHIO ENERGY GROUP

Janine L. Migden-Ostrander
Consumers' Counsel
Gregory J. Poulos
Michael E. Idzkowski
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Clinton A. Vince
Douglas G. Bonner
Daniel D. Barnowski
Keith C. Nausbaum
Emma F. Hand
Sonnenschein Nath & Rosenthal
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005

ON BEHALF OF ORMET PRIMARY ALUMINUM CORPORATION

Duane Luckey, Section Chief
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Kimberly Bojko
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

Greta See
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

ATTORNEY EXAMINERS

Alan R. Schriber, Chairman
Valerie A. Lemmie, Commissioner
Paul A. Centolella, Commissioner
Cheryl Roberto, Commissioner
Steven Lesser, Commissioner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

CERTIFICATE OF FILING

I hereby certify that a *Notice of Appeal of Appellant Industrial Energy Users-Ohio* has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on April 27, 2010.

Joseph M. Clark
Counsel for Appellant,
Industrial Energy Users-Ohio

{C30680: }

IN THE SUPREME COURT OF OHIO

ORIGINAL

In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates	:	Case No. 2010-0722 Appeal from the Public Utilities Commission of Ohio Public Utilities Commission of Ohio Case No. 09-1095-EL-RDR

AMENDED NOTICE OF CROSS-APPEAL OF APPELLEE/CROSS-APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Samuel C. Randazzo
(Reg. No. 0016386)
(Counsel of Record)
Lisa G. McAlister
(Reg. No. 0075043)
Joseph M. Clark
(Reg. No. 0080711)
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

COUNSEL FOR APPELLEE/CROSS-APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Richard Cordray
(Reg. No. 0038034)
Attorney General of Ohio
Duane L. Luckey
(Reg. No. 0023557)
Section Chief, Public Utilities Section
(Counsel of Record)
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
Telephone: (614) 466-4397
Facsimile: (614) 644-8764
duane.luckey@puc.state.oh.us

COUNSEL FOR APPELLEE, PUBLIC UTILITIES COMMISSION OF OHIO

{C30680:2 }

Steven T. Nourse
(Reg. No. 0046705)
(Counsel of Record)
Marvin I. Resnik
(Reg. No. 0005695)
Kevin F. Duffy
(Reg. No. 0005867)
American Electric Power Service
Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Telephone: (614) 716-1606
Facsimile: (614) 716-2950
stnourse@aep.com
miresnik@aep.com
kfduffy@aep.com

COUNSEL FOR APPELLANT/CROSS-APPELLEE COLUMBUS SOUTHERN POWER COMPANY AND OHIO POWER COMPANY

{C30680:2 }

NOTICE OF CROSS-APPEAL OF
APPELEE/CROSS-APPELLANT INDUSTRIAL ENERGY USERS-OHIO

Appellee/Cross-Appellant, Industrial Energy Users-Ohio ("IEU-Ohio" or "Appellee/Cross-Appellant"), hereby gives its notice of appeal, pursuant to R.C. 4903.11, R.C. 4903.13, and Supreme Court Rule of Practice 2, to the Supreme Court of Ohio, Appellee, and Appellant/Cross-Appellee from a January 7, 2010 Finding and Order (Attachment A), a March 3, 2010 Entry on Rehearing (Attachment B), and a March 24, 2010 Entry on Rehearing (Attachment C) of the Public Utilities Commission of Ohio ("Commission or PUCO") in Case No. 09-1095-EL-RDR.

Appellee/Cross-Appellant was and is a party of record in PUCO Case No. 09-1095-EL-RDR and timely filed its Application for Rehearing of Appellee's January 7, 2010 Finding and Order in accordance with R.C. 4903.10. Appellee/Cross-Appellant's Application for Rehearing was denied with respect to the issues on appeal herein by the Appellee's Entry on Rehearing dated March 24, 2010.

The Appellee's Finding and Order and March 24, 2010 Entry on Rehearing approving the Application of Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively referred to as the "Companies" or "AEP-Ohio") is unlawful and unreasonable in multiple respects. Specifically, the Appellee's Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable in the following respects:

A. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over PUCO Case No 09-1095-EL-RDR. The Commission lost jurisdiction over AEP-Ohio's electric security plan ("ESP") and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.

B. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.

C. The Finding and Order and March 24, 2010 Entry on Rehearing are unlawful and unreasonable inasmuch as the brand new exception for the economic development rider ("EDR") from the maximum percentage increases permitted in the ESP violates the Commission's precedent and unreasonably increases customers' rates.

D. The Finding and Order and March 24, 2010 Entry on Rehearing are unreasonable inasmuch they permit AEP-Ohio to calculate the carrying costs on deferred EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.

WHEREFORE, Appellee/Cross-Appellant respectfully submits that Appellee's January 7, 2010 Finding and Order and March 24, 2010 Entry on Rehearing are unlawful, unjust, and unreasonable and should be reversed. The case should be remanded to Appellee with instructions to correct the errors complained of herein.

Respectfully Submitted,

Joseph M. Clark

Samuel C. Randazzo, Counsel of Record (0016386)
Lisa G. McAlister (0075043)
Joseph M. Clark (0080711)
McNees Wallace & Nurick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Facsimile: (614) 469-4653

COUNSEL FOR APPELLEE/CROSS-APPELLANT, INDUSTRIAL ENERGY USERS-OHIO

CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Notice of Cross-Appeal of Appellee/Cross-Appellant Industrial Energy Users-Ohio* was sent by ordinary U.S. mail, postage prepaid, or hand-delivered to all parties to the proceeding before the Public Utilities Commission of Ohio, listed below, and pursuant to Section 4903.13 of the Ohio Revised Code on May 21, 2010.

Joseph M. Clark
Counsel for Appellant,
Industrial Energy Users-Ohio

Marvin I. Resnik
Steven T. Nourse
American Electric Power Service Corp.
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street
Columbus, OH 43215

ON BEHALF OF COLUMBUS SOUTHERN POWER AND OHIO POWER COMPANY

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

ON BEHALF OF OHIO ENERGY GROUP

Janine L. Migden-Ostrander
Consumers' Counsel
Gregory J. Poulos
Michael E. Idzkowski
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Clinton A. Vince
Douglas G. Bonner
Daniel D. Barnowski
Keith C. Nausbaum
Emma F. Hand
Sonnenschein Nath & Rosenthal
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005

ON BEHALF OF ORMET PRIMARY ALUMINUM CORPORATION

{C30680:2 }

Duane Luckey, Section Chief
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Kimberly Bojko
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

Greta See
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

ATTORNEY EXAMINERS

Alan R. Schriber, Chairman
Valerie A. Lemmie, Commissioner
Paul A. Centolella, Commissioner
Cheryl Roberto, Commissioner
Steven Lesser, Commissioner
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

CERTIFICATE OF FILING

I hereby certify that a *Notice of Cross-Appeal of Appellee/Cross-Appellant Industrial Energy Users-Ohio* has been filed with the docketing division of the Public Utilities Commission of Ohio in accordance with Rules 4901-1-02(A) and 4901-1-36 of the Ohio Administrative Code, on May 21, 2010.

Joseph M. Clark
Counsel for Appellee/Cross-Appellant,
Industrial Energy Users-Ohio

{C30680:2 }

FILE

2010

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.)	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.)	Case No. 08-918-EL-SSO
In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company.)	Case No. 09-872-EL-FAC Case No. 09-873-EL-FAC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Recover Commission-Authorized Deferrals Through Each Company's Fuel Adjustment Clause.)	Case No. 09-1094-EL-FAC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates.)	Case No. 09-1095-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates.)	Case No. 09-1906-EL-ATA

APPLICATION FOR REHEARING AND MEMORANDUM IN SUPPORT OF INDUSTRIAL ENERGY USERS-OHIO

{C30008: }

Samuel C. Randazzo, Counsel of Record
Lisa G. McAlister
Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

February 05, 2009

Attorneys for Industrial Energy Users-Ohio

{C30008: }

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.)	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.)	Case No. 08-918-EL-SSO
In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company.)	Case No. 09-872-EL-FAC Case No. 09-873-EL-FAC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Recover Commission-Authorized Deferrals Through Each Company's Fuel Adjustment Clause.)	Case No. 09-1094-EL-FAC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates.)	Case No. 09-1095-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates.)	Case No. 09-1906-EL-ATA

APPLICATION FOR REHEARING OF INDUSTRIAL ENERGY USERS-OHIO

Pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Industrial Energy Users-Ohio ("IEU-Ohio") respectfully submits this Application for Rehearing from the January 7, 2010 Finding and Order in Case Nos. 09-872-EL-FAC, 09-873-EL-FAC, and 09-1906-EL-ATA (collectively "2010

Initial Rate Increase Cases") as well as the January 7, 2010 Finding and Order in Case No. 09-1095-EL-UNC ("Rider EDR Proceeding") of the Public Utilities Commission of Ohio ("Commission"). As explained in more detail in the attached Memorandum in Support, the Findings and Orders in the 2010 Initial Rate Increase Cases and Rider EDR Proceeding for Columbus Southern Power Company ("CSP") and Ohio Power Company ("OP") (collectively, "AEP-Ohio" or "Companies") are unlawful and unreasonable for the following reasons:

A. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over the 2010 Initial Rate Increase Cases or the Rider EDR Proceeding. The Commission lost jurisdiction over AEP-Ohio's ESP and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.

B. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.

C. The Rider EDR Proceeding Finding and Order is unlawful and unreasonable inasmuch as the brand new exception for Rider EDR from the maximum percentage increases permitted in the ESP violates the Commission's precedent and unreasonably increases customers' rates.

D. The Finding and Order in the Rider EDR Proceeding is unreasonable inasmuch it permits AEP-Ohio to calculate the carrying costs on deferred Rider EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.

E. Approval of the recovery of delta revenues associated with the interim Ormet reasonable arrangement through the FAC as part of the 2010 Initial Rate Increase Proceedings was unreasonably premature inasmuch as the Commission has not yet issued an Order in the Ormet Interim Reasonable Arrangement Case.

IEU-Ohio respectfully requests that the Commission grant this Application for Rehearing and grant the relief requested herein.

Respectfully submitted,

Joseph M Clark

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
McNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.	)	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.	)	Case No. 08-918-EL-SSO
In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company.	)	Case No. 09-872-EL-FAC Case No. 09-873-EL-FAC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Recover Commission-Authorized Deferrals Through Each Company's Fuel Adjustment Clause.	)	Case No. 09-1094-EL-FAC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Their Economic Development Cost Recovery Rider Rates.	)	Case No. 09-1095-EL-UNC
In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates.	)	Case No. 09-1906-EL-ATA

MEMORANDUM IN SUPPORT

I. INTRODUCTION

On March 18, 2009, the Commission modified and approved AEP-Ohio's proposed electric security plan ("ESP"). In its Opinion and Order the Commission imposed maximum rate increase limitations for each of the Companies for each year of the ESP.[1] The maximum rate increases for 2010 are 7% for OP customers and 6% for CSP customers. However, the Commission also exempted certain rate components from the increase limitations.[2] Additionally, the Commission approved the creation of a fuel adjustment clause ("FAC") for the duration of the ESP for each of the Companies and granted the Companies accounting authority to defer for possible future collection through an unavoidable surcharge any FAC costs beyond those recoverable under the Commission's increase limitations.[3] The Commission also denied the Companies' request for automatic increases associated with generation expenses that are not recovered through the FAC. Further, the Commission granted the Companies authority to create an economic development cost recovery rider (Rider EDR) to recover delta revenue related to reasonable arrangements.[4]

On November 13, 2009 the Companies filed an Application in Case No. 09-1094-EL-FAC for permission to recover delta revenue related to a Commission-approved interim reasonable arrangement with Ormet Primary Aluminum Corporation ("Ormet") ("Ormet Interim Reasonable Arrangement Case"). The delta revenue in the Ormet Interim Reasonable Arrangement Case are associated with service to Ormet for the period of January 1, 2009 through September 17, 2009 and

---

[1] *In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets*, PUCO Case Nos. 08-917-EL-SSO, *et al.*, Opinion and Order at 22 (March 18, 2009) (hereinafter cited as "*AEP ESP Proceeding*").

[2] Exempted from the rate increase limitations are the Companies' transmission cost recovery riders ("TCRR"), any future adjustments to the Companies' energy efficiency/peak demand reduction ("EE/PDR") benchmark cost recovery riders, and any revenue increases associated with any distribution base rate case that may occur during the term of AEP-Ohio's ESP. *AEP ESP Proceeding*, Entry on Rehearing at 9, 31 (July 23, 2009).

[3] *AEP ESP Proceeding*, Opinion and Order at 22-23.

[4] *AEP ESP Proceeding*, Opinion and Order at 47-48.

include carrying costs proposed by AEP-Ohio.[5] On November 13, 2009 the Companies also filed an Application in Case No. 09-1095-EL-UNC to recover through Rider EDR its actual and predicted 2009 delta revenue associated with the long-term unique arrangement approved for Ormet in Case No. 09-119-EL-AEC and with the unique arrangement approved for Eramet Marietta, Inc. ("Eramet") in Case No. 09-516-EL-AEC.[6] The Companies also proposed to recover their 2010 estimated delta revenue associated with the Ormet and Eramet unique arrangements. On November 25, 2009, IEU-Ohio filed Motions to Intervene and Set Matters for Hearing in the Ormet Interim Reasonable Arrangement Case and the Rider EDR Proceeding, respectively, and raised several issues related to AEP-Ohio's Applications.

On December 1, 2009, the Companies filed a request in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC to increase their FAC rates to "reflect the percent increases permitted by the Commission in the ESP cases."[7] The Companies also specifically noted that their FAC increase filing included the FAC-related deferrals associated with the Ormet interim reasonable arrangement (as set out in Case No. 09-1094-EL-FAC). Additionally, on December 3, 2009, the Companies filed an Application in Case No. 09-1906-EL-ATA to decrease their non-FAC rates, although the decrease was really just a shift from recovering 12 months of non-FAC revenue over a nine-month period to recovering 12 months of non-FAC

[5] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Recover Commission-Authorized Deferrals Through Each Company's Fuel Adjustment Clause*, Case No. 09-1094-EL-FAC, Application at 3-5 (November 13, 2009).

[6] *Rider EDR Proceeding*, Application (November 13, 2009).

[7] *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC, *et al.*, Cover Letter with Tariff Filing (December 1, 2009).

{C30008: }

revenue over a 12-month period.[8] On December 10, 2009, Commission Staff issued a review and recommendation in the 2010 Initial Rate Increase Cases, finding that the rates proposed in the Applications provide for increases no greater than those authorized by the Commission and recommending that the Applications be approved. And, on December 11, 2009, IEU-Ohio filed a Motion to Consolidate the 2010 Initial Rate Increase Cases, the Rider EDR Proceeding, and the Ormet Interim Reasonable Arrangement Case.

The Commission issued its Findings and Orders in the 2010 Initial Rate Increase Cases and Rider EDR Proceeding on January 7, 2010. The Commission has not yet issued an order in the Ormet Interim Reasonable Arrangement Case. The Commission denied IEU-Ohio's requests to set the matters for hearing and to consolidate the cases. Additionally, the Commission rebuffed each of IEU-Ohio's substantive objections raised in the Rider EDR Proceeding. IEU-Ohio hereby respectfully files its Application for Rehearing for the Commission's consideration.

II. ARGUMENTS IN SUPPORT OF REHEARING

A. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission has no subject matter jurisdiction over the 2010 Initial Rate Increase Cases or the Rider EDR Proceeding. The Commission lost jurisdiction over AEP-Ohio's ESP and all proceedings stemming from the ESP when the Commission failed to issue an order within 150 days of the filing of AEP-Ohio's ESP Application.

AEP-Ohio filed its initial ESP Application with the Commission on July 31, 2008. Under Section 4928.143, Revised Code, the Commission was required to issue an order on AEP-Ohio's proposed ESP within 150 days, or December 28, 2008. The

[8] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Modify Their Standard Service Offer Rates*, Case No. 09-1906-EL-ATA, Application (December 3, 2009).

{C30008: }

Commission eventually issued its Opinion and Order 80 days late on March 18, 2009. AEP-Ohio relies upon its approved ESP as the basis and the enabling vehicle for its Applications in the 2010 Initial Rate Increase Cases[9] and the Rider EDR Proceeding.[10]

Section 4928.143(C)(1) states, "The commission shall issue an order under this division for an initial application under this section not later than one hundred fifty days after the application's filing date and, for any subsequent application by the utility under this section, not later than two hundred seventy-five days after the application's filing date." Under Section 4928.141(A), Revised Code, until the Commission issues an order approving, modifying and approving, or denying an ESP application, and upon expiration of the jurisdictional deadline, the then-current rate plan of an EDU must continue for the purpose of the utility's compliance with Section 4928.141(A), Revised Code. Thus, the Commission lost subject matter jurisdiction over AEP-Ohio's ESP Application when it failed to issue an order within the 150-day timeframe mandated by Section 4928.143(C)(1), Revised Code.

As a creature of statute, the Commission may only exercise that jurisdiction conferred upon it by the Ohio Revised Code.[11] The Commission patently lacked jurisdiction to proceed with the ESP case. Because the underlying ESP Orders are unlawful and the authority for the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding are grounded in the ESP, the Commission's Findings and Orders are unlawful and beyond the Commission's statutory authority. All Commission Orders in

---

[9] *In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, PUCO Case Nos. 09-872-EL-FAC, *et al.*, Cover Letter with Tariff Filing (December 1, 2009).

[10] *Rider EDR Proceeding*, Application at 1 (November 13, 2009).

[11] *Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 234 (1999).

{C30008: }

the ESP proceeding itself, or any other subsequent proceedings stemming from the ESP proceeding, are illegal.

The Commission should find that its Orders in the 2010 Initial Rate Increase Cases, the Rider EDR Proceeding, and the ESP case were beyond its statutory authority inasmuch as the Commission lost subject matter jurisdiction over AEP-Ohio's ESP when it failed to issue an order within the 150-day deadline imposed by SB 221. As a remedy, the Commission should require AEP-Ohio to replace its current tariffs with the tariffs that were in effect on July 31, 2008 in accordance with Sections 4928.141 and 4928.143, Revised Code.

B. The Findings and Orders are unlawful and unreasonable inasmuch as the Commission continues to permit AEP-Ohio to take the benefits of the higher rates contained in the ESP while AEP-Ohio simultaneously still reserves the right to withdraw and terminate its ESP.

Section 4928.143(C)(1), Revised Code only permits the Commission to approve an ESP if it finds that the approved ESP, which the Commission may modify before approving, is "more favorable in the aggregate" as compared to the expected results of a market rate option ("MRO") plan. Additionally, Section 4928.143(C)(2)(a), Revised Code, permits an EDU such as AEP-Ohio to withdraw, and thereby terminate, an ESP application when modifications made by the Commission are not acceptable to the EDU. Upon such withdrawal and termination, the electric distribution utility ("EDU") may file a new ESP application or an MRO under Section 4928.142, Revised Code. Further, Section 4928.141, Revised Code, states plainly that:

> Only a standard service offer authorized in accordance with section 4928.142 or 4928.143 of the Revised Code, shall serve as the utility's standard service offer for the purpose of compliance with this section; and that standard service offer shall serve as the utility's default standard

service offer for the purpose of section 4928.14 of the Revised Code. Notwithstanding the foregoing provision, the rate plan of an electric distribution utility shall continue for the purpose of the utility's compliance with this division until a standard service offer is first authorized under section 4928.142 or 4928.143 of the Revised Code.

Thus, under Section 4928.141, Revised Code, an EDU cannot accept the benefits of the rates approved in an ESP while simultaneously preserving the right to withdraw and terminate the ESP.

As IEU-Ohio has documented previously, AEP-Ohio has taken the benefits of its approved ESP at every turn while continuing to dispute the lawfulness and reasonableness of the very Orders that permit AEP-Ohio to enjoy those benefits.[12] Indeed, AEP-Ohio has never formally accepted its approved ESP, is still taking the benefits of the ESP, and has filed an appeal of its ESP at the Ohio Supreme Court.[13] The Commission has never addressed this point of law despite IEU-Ohio raising it multiple times during the ESP proceeding.[14] Thus, IEU-Ohio raises it again in these proceedings.

Ohio law does not allow AEP-Ohio to take the benefits of the Commission's Orders while reserving judgment to withdraw and terminate its ESP proposal. So long as AEP-Ohio reserves judgment to withdraw and terminate the approved ESP as a result of modifications made by the Commission, Section 4928.141, Revised Code,

---

[12] *See AEP ESP Proceeding*, IEU-Ohio Application for Rehearing at 9-12 (August 17, 2009).

[13] *Columbus Southern Power Co. v. Pub. Util. Comm.*, Ohio Supreme Court Case No. 2009-2298.

[14] *See AEP ESP Proceeding*, Entry on Rehearing at 2 (July 23, 2009). IEU-Ohio filed a Motion for Immediate Relief from Electric Rate Increases on April 20, 2009, raising this legal issue for the Commission's consideration. Despite the Commission indicating it would address IEU-Ohio's Motion (and all other pending motions) in its Entry on Rehearing, the Commission never mentioned or ruled on IEU-Ohio's Motion (or any of the other pending motions) in the remainder of its Entry on Rehearing. *See also AEP ESP Proceeding*, Second Entry on Rehearing at 7 (November 4, 2009) (finding that it was unnecessary to address this issue on rehearing because AEP-Ohio has not filed notice with the Commission indicating it would withdraw and terminate its approved ESP).

requires the prior "rate plan" to continue. The Findings and Orders in the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding contain the same fatal legal flaw as the Commission's Orders in the AEP-Ohio ESP Proceeding. The Commission illegally and unreasonably failed to require AEP-Ohio to accept the approved ESP and relinquish its statutory right to withdraw and terminate the ESP as a condition of taking the benefits of even higher rates approved in the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding.

Further, the Commission's failure to prohibit AEP-Ohio from accepting the benefits of the ESP, while simultaneously reserving judgment on whether to withdraw and terminate the ESP, undermines the very threshold ESP versus MRO comparison that Section 4928.143, Revised Code, requires be met for the Commission to approve an ESP and, by extension, to entertain the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding authorized by the approved ESP. The ESP versus MRO comparison conducted in the ESP proceeding by the Commission necessarily assumes that each of the components of the ESP will go unchallenged and not be disturbed. Modifying any portion of the approved ESP would necessarily affect the "more favorable in the aggregate" test. The Commission's failure to prohibit AEP-Ohio from taking the benefits of the ESP while reserving judgment on whether to accept the ESP leaves open the question of the ultimate costs to customers from the ESP, thereby calling into question the necessary assumption that the ESP construct in which the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding is proposed is in fact more favorable in the aggregate than the expected results of an MRO.

The Commission must reverse its approval of the 2010 Initial Rate Increase Cases and the Rider EDR Proceeding inasmuch as the Findings and Orders are illegal under Sections 4928.141 and 4928.143, Revised Code, until AEP-Ohio formally accepts its approved ESP. The Commission should grant rehearing and condition AEP-Ohio's ability to continue charging the rates approved in the Findings and Orders on AEP-Ohio affirmatively accepting its ESP and withdrawing its appeal of its approved ESP.

C. The Rider EDR Proceeding Finding and Order is unlawful and unreasonable inasmuch as the brand new exception for Rider EDR from the maximum percentage increases permitted in the ESP violates the Commission's precedent and unreasonably increases customers' rates.[15]

The Commission's Entry on Rehearing in the AEP-Ohio ESP Proceeding explains that certain riders are exempt from the annual maximum rate increases set by the Commission in its Opinion and Order. Specifically, the Entry on Rehearing enumerated the exempted charges, saying "Additionally, the Commission clarifies that the Transmission Cost Recovery (TCR) rider should not impact the allowable total percentage increase. ... Similarly, any future adjustments to the EE/PDR Rider are excluded from the allowable total percentage increases. ... We further clarify that the phase-in/deferral structure does not include revenue increases associated with any distribution base rate case that may occur in the future."[16] Even more succinctly, the Commission again listed the riders that would be exempt from the maximum rate

[15] IEU-Ohio's Assignment of Error only takes issue with the Commission's new exception for Rider EDR from the maximum revenue increases permitted by the Commission. IEU-Ohio has consistently supported the use of reasonable arrangements by Ohio as a tool to complement its economic development and retention efforts and has conveyed this long-standing perspective during legislative and regulatory proceedings. *See, for example, In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company*, PUCO Case No. 09-119-EL-AEC, Post Hearing Brief of Industrial Energy Users-Ohio at 4, FN 2 (July 1, 2009).

[16] *AEP ESP Proceeding*, Entry on Rehearing at 9.

{C30008: }

increase limitations, stating "As discussed in findings (27) and (28) above in regard to the TCR, we clarify that the percentage cap increase on total customer bills does not include the EE/PDR rider or future distribution base rates established pursuant to a separate proceeding."[17]

IEU-Ohio observed in its Motion to Consolidate that it appeared that AEP-Ohio believed that Rider EDR was excluded from the maximum rate increase percentages included in its approved ESP.[18] In its Finding and Order, the Commission (for the first time) found that Rider EDR is not subject to the maximum rate increase limitations. The Commission explained that its list of riders and other mechanisms exempt from the rate increase limitations was not "exhaustive" and that the recovery of delta revenues is permitted by statutory law and the Commission's rules.[19] The Commission also noted that to find otherwise would result in considerable deferrals being created, including carrying costs, which would be passed on to customers.[20]

---

[17] *AEP ESP Proceeding*, Entry on Rehearing at 31.

[18] *See 2010 Initial Rate Increase Cases and Rider EDR Proceeding*, Motion to Consolidate at 6, FN 9 (December 11, 2009).

[19] *Rider EDR Proceeding*, Finding and Order at 10.

[20] *Id.* This is a problem the Commission itself created. It was the Commission that permitted AEP-Ohio to collect ESP rates over what the Commission judged to be "just and reasonable" and worsen the consequences by deferring the obvious effects of the Commission's action until 2012 and making the consequences non-bypassable. If the Commission is interested in addressing the potential growth in deferrals, IEU-Ohio suggests that the Commission should direct its attention to things like eliminating the provider of last resort ("POLR") charges, which the Commission approved without any legitimate justification, or directing that the POLR revenue be applied to offset the potential for deferrals. At a minimum, the Commission's interest in deferrals ought to result in the Commission taking another look at the level of the POLR charge, particularly since its hypothetical justification rested on an assumed market price of electricity of approximately $74.00 per megawatt hour ("MWh") which the Commission rejected as being too high in the FirstEnergy ESP proceeding. See *AEP ESP Proceeding*, Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio at 23-24 (April 16, 2009). In any event, it is unreasonable for the Commission to claim that it has some concern about the potential impact of deferrals when the Commission is permitting AEP-Ohio to raise rates at levels that create the very problem which the Commission says it is trying to avoid.

{C30008: }

The Commission's Finding and Order is unlawful inasmuch as the Commission's decision is contrary to its own precedent. Nowhere does the Commission mention in its Entry on Rehearing or any other Order in AEP-Ohio's ESP proceeding that any other rider or other charge will be excluded from the maximum revenue increase limitations other than those enumerated by the Commission. Nor does the Commission indicate or give any hint that the list of exemptions (which it recited twice in the Entry on Rehearing) was not exhaustive. The Commission's Entry on Rehearing made it clear that only the EE/PDR Rider and the TCRR as well as any increase from a distribution rate case are exempt from the maximum rate increase limitations.

Additionally, the Commission's decision is unreasonable inasmuch as it piles on additional increases for customers at a most precarious time for Ohio's economy. In the ESP Opinion and Order, the PUCO determined that customers could not absorb the annual 15% increases proposed by AEP-Ohio.[21] However, the Commission's decision essentially places some larger customers on the same path the Commission found unacceptable only 11 months ago. The increases permitted in the 2010 Initial Rate Increase Cases, combined with the rate increases approved in the Rider EDR Proceeding as well as AEP-Ohio's proposed increase to its EE/PDR Rider, would raise some larger customers' bills by over 10% for 2010.[22] Further, this percentage increase does not include any increase that may be approved this year in the annual update of

[21] *AEP ESP Proceeding*, Opinion and Order at 22. "Nonetheless, given the current economic climate, we believe that the 15 percent cap proposed by the Companies is too high." The Commission noted in a footnote that its belief was confirmed by various letters filed in the AEP ESP docket.

[22] The Stipulation and Recommendation in AEP-Ohio's EE/PDR portfolio plan proceeding shows some larger customers would experience up to 4% total bill increases solely attributable to the proposed EE/PDR Rider. *See In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration*, PUCO Case Nos. 09-1089-EL-POR, *et al.*, Stipulation and Recommendation at Attachment A (November 12, 2009).

AEP-Ohio's TCRR or in a distribution rate case for AEP-Ohio.[23] Thus, the Commission's decision to now, for the first time, exempt Rider EDR from the revenue increase limitations unreasonably places customers in the very same position that the Commission found untenable when it approved AEP-Ohio's ESP in March 2009.

The Commission's Finding and Order in the Rider EDR Proceeding is unlawful inasmuch as it violates the Commission's own recent precedent and is unreasonable inasmuch as it unfairly piles on rate increases at a time when customers can least afford the rate increases proposed for Rider EDR. The Commission should grant rehearing and place Rider EDR under the maximum rate increase limitations approved in AEP-Ohio's ESP proceeding.

D. The Finding and Order in the Rider EDR Proceeding is unreasonable inasmuch it permits AEP-Ohio to calculate the carrying costs on deferred Rider EDR delta revenues as the weighted average cost of long-term debt without any evaluation of possible lesser cost alternatives.

In calculating the carrying costs associated with the Rider EDR delta revenues, AEP-Ohio proposed to use the weighted average costs of each company's respective long-term debt. The Commission adopted AEP-Ohio's proposal to use the average cost of each operating company's long-term debt, reasoning that it is a more appropriate mechanism under the semiannual reconciliation process prescribed for EDR rates under Rule 4901:1-38-08, O.A.C.[24] The Commission also directed AEP-Ohio to use, on a going-forward basis, the interest rates from its latest-approved filing for the calculation

---

[23] AEP-Ohio is required to file its TCRR update Application by April 16, 2010 for rates effective on July 1, 2010. *See In the Matter for the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as Amended by Amended Substitute Senate Bill 221*, PUCO Case No. 08-777-EL-ORD, Entry at 1 (April 15, 2009).

[24] *Rider EDR Proceeding*, Finding and Order at 9.

{C30008: }

of carrying costs. Without any rationale or explanation, the Commission also rejected IEU-Ohio's proposal to recover carrying charges equal to AEP-Ohio's short term debt rate since the recovery period for Rider EDR is not more than 12 months.

The Commission should reverse its Finding and Order inasmuch as it is unreasonable. The Commission simply accepted AEP-Ohio's request with no examination of any lower cost alternatives. The Commission made no inquiry as to whether a short-term debt rate, which may be more appropriate in this instance since the recovery period is twelve months or less (Rider EDR will be updated and reconciled semi-annually)[25], would provide a lower interest rate that customers will pay for AEP-Ohio to carry this debt on its books. The "current economic climate" previously acknowledged by the Commission during the AEP-Ohio ESP proceeding has not improved.[26] Customers of all shapes and sizes need every break they can get on their bills and the Commission's failure to exert any effort to at least explore whether it could save customers money in this regard is unreasonable.

---

[25] *Id.* at 11-12.

[26] *AEP ESP Proceeding*, Opinion and Order at 22. Ohio's unemployment rate jumped to 10.9% in December 2009. Ohio's unemployment rate in March 2009, the month that the Commission issued the Opinion and Order in the ESP case, was 9.7%.

{C30008: }

E. Approval of the recovery of delta revenues associated with the interim Ormet reasonable arrangement through the FAC as part of the 2010 Initial Rate Increase Proceedings was unreasonably premature inasmuch as the Commission has not yet issued an Order in the Ormet Interim Reasonable Arrangement Case.

As noted above, AEP-Ohio included in its proposed FAC charge in Case Nos. 09-872-EL-FAC and 09-873-EL-FAC a request to collect through the FAC delta revenue amounts AEP-Ohio associates with the Ormet interim reasonable arrangement. AEP-Ohio also filed an Application for Commission review and approval of the interim reasonable arrangement delta revenue amounts in the Ormet Interim Reasonable Arrangements Case. The Commission approved the up-front recovery through the FAC of the delta revenue amounts proposed by AEP-Ohio despite not issuing a companion order approving AEP-Ohio's Application in the Ormet Interim Reasonable Arrangement case.

Several Parties raised significant concerns about the proposed Ormet interim reasonable arrangement delta revenue collections that, if accepted by the Commission, would drastically impact the amounts of delta revenues collected from customers through the FAC.[27] For example, the Ohio Consumers' Counsel ("OCC") and the Ohio Energy Group ("OEG") recommend only permitting AEP-Ohio to collect a maximum of <u>$2.7 million</u> in delta revenues associated with the Ormet interim reasonable arrangement rather than the <u>$66 million</u> that AEP-Ohio requests. It is unreasonable to collect delta revenues from customers through the FAC that have not yet been found to be just and reasonable, especially when multiple parties have raised significant and

[27] *See Ormet Interim Reasonable Arrangement Case*, Reply to AEP Memorandum Contra IEU Motion to Set Matter for Hearing and Objections to AEP's Application by The Office of the Ohio Consumers' Counsel and The Ohio Energy Group (December 16, 2009).

warranted concerns about the proper calculation of Ormet interim reasonable arrangement delta revenues.

The Commission's decision is even more unreasonable because the Commission previously found that additional proceedings were needed to determine the appropriate level of Ormet-related delta revenues that would be recovered from customers, including those delta revenues associated with the Ormet interim reasonable arrangement.[28] The Commission's approval of the up-front delta revenue recovery associated with the Ormet interim reasonable arrangement before issuing an order in the Ormet Interim Reasonable Arrangement Case essentially negates the Commission's previous Orders and runs contrary to its express intent to thoroughly explore the delta revenue amounts associated with the Ormet interim reasonable arrangement. An after the fact adjustment of the FAC dependent on the outcome of the Ormet Interim Reasonable Arrangement Case is clearly not what the Commission envisioned in its previous Orders.

Finally, it is unreasonable to approve recovery of the interim reasonable arrangement delta revenues when the proceeding in which the Commission approved the delta revenue deferral accounting authority has not completed. The Commission issued its Finding and Order approving AEP-Ohio's Application for accounting authority to defer delta revenues associated with the interim reasonable arrangement on January 7, 2009. OCC filed an Application for Rehearing of the Commission's Finding and Order and, on March 4, 2009, the Commission granted OCC's Application for

[28] *Ormet Interim Reasonable Arrangement Case*, Industrial Energy Users-Ohio's Reply to AEP-Ohio's Memorandum Contra Industrial Energy Users-Ohio's Motion to Set Matter for Hearing at 1-2 (December 15, 2009). *See also Ormet Interim Reasonable Arrangement Case*, Motion to Intervene, Motion to Set Matter for Hearing, and Memorandum in Support of Industrial Energy Users-Ohio (November 25, 2009).

Rehearing for purposes of further considering OCC's Application for Rehearing. The Commission has not yet issued a substantive Entry on Rehearing addressing the issues timely raised by OCC.

The Commission's Finding and Order in the 2010 Initial Rate Increase Cases is unreasonable inasmuch as the Commission should not have approved recovery of the Ormet interim reasonable arrangement delta revenues when the Commission has not yet determined what the just and reasonable delta revenue amounts should be, the Commission did not hold a hearing on the amounts of recoverable delta revenues as it indicated in its previous Orders, and the Commission proceeding approving the very accounting authority that enables the collection of these delta revenues has not completed.

III. CONCLUSION

IEU-Ohio urges the Commission to grant its Application for Rehearing, abrogate its Findings and Orders, and hold that it lacks subject matter jurisdiction over the AEP ESP case, the 2010 Initial Rate Increase Cases, and the Rider EDR Proceeding. If the Commission finds that it does have subject matter jurisdiction over these cases, IEU-Ohio requests the Commission grant rehearing and condition AEP-Ohio's ability to continue charging the rates approved in the Findings and Orders on AEP-Ohio affirmatively accepting its ESP and withdrawing its appeal of its approved ESP. Further, if the Commission finds that it does have subject matter jurisdiction over these cases and that AEP-Ohio can accept the benefits of the ESP while holding out its right to withdraw and terminate the ESP, the Commission should find that Rider EDR is subject to the maximum rate increases in the approved ESP and require further investigation into the least cost carrying cost rate for deferred Rider EDR delta revenues. Finally, the Commission should remove the delta revenues associated with the Ormet interim reasonable arrangement from collection through the FAC until the Ormet Interim Reasonable Arrangement Case concludes.

Respectfully submitted,

Samuel C. Randazzo (Counsel of Record)
Lisa G. McAlister
Joseph M. Clark
McNEES WALLACE & NURICK LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com

Attorneys for Industrial Energy Users-Ohio

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing and Memorandum in Support of Industrial Energy Users-Ohio* was served upon the following parties of record this 5th day of February 2009, via first class mail, postage prepaid.

Joseph M. Clark

JOSEPH M. CLARK

Marvin I. Resnik, Counsel of Record
Steven T. Nourse
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215

Selwyn J. R. Dias
Columbus Southern Power Company
Ohio Power Company
88 E. Broad Street – Suite 800
Columbus, OH 43215

Daniel R. Conway
Porter Wright Morris & Arthur
Huntington Center
41 S. High Street
Columbus, OH 43215

ON BEHALF OF COLUMBUS SOUTHERN POWER AND OHIO POWER COMPANY

David F. Boehm
Michael L. Kurtz
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202

ON BEHALF OF OHIO ENERGY GROUP

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213

ON BEHALF OF THE KROGER CO.

Janine L. Migden-Ostrander
Consumers' Counsel
Maureen R. Grady, Counsel of Record
Terry L. Etter
Michael E. Idzkowski
Richard Reese
Greg Poulous
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485

ON BEHALF OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Barth E. Royer, Counsel of Record
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Nolan Moser
Air & Energy Program Manager
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

Trent A. Dougherty
Staff Attorney
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, OH 43212-3449

ON BEHALF OF THE OHIO ENVIRONMENTAL COUNCIL

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45839

ON BEHALF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

Richard L. Sites
Ohio Hospital Association
155 E. Broad Street, 15th Floor
Columbus, OH 43215-3620

Thomas O'Brien
Matthew Warnock
Bricker & Eckler
100 South Third Street
Columbus, OH 43215

ON BEHALF OF THE OHIO HOSPITAL ASSOCIATION

David I. Fein
Cynthia Fonner
Constellation Energy Group
550 W. Washington Street, Suite 300
Chicago, IL 60661

ON BEHALF OF CONSTELLATION ENERGY GROUP

Bobby Singh
Integrys Energy Services, Inc.
300 West Wilson Bridge Road, Suite 350
Worthington, OH 43085

ON BEHALF OF INTEGRYS ENERGY SERVICES, INC.

Howard Petricoff
Stephen M. Howard
Michael Setterini
Vorys, Sater, Seymour & Pease LLP
52 E. Gay Street
Columbus, OH 43215

ON BEHALF OF CONSTELLATION NEW ENERGY AND CONSTELLATION NEW ENERGY COMMODITIES GROUP, DIRECT ENERGY SERVICES, LLC, INTEGRYS ENERGY SERVICES, INC., NATIONAL ENERGY MARKETERS ASSOCIATION, OHIO SCHOOL OF BUSINESS OFFICIALS, OHIO SCHOOL BOARDS ASSOCIATION, BUCKEYE ASSOCIATION OF SCHOOL ADMINISTRATORS, AND ENERNOC, INC.

Craig G. Goodman
National Energy Marketers Association
3333 K. Street, N.W., Suite 110
Washington, D.C. 20007

ON BEHALF OF NATIONAL ENERGY MARKETERS ASSOCIATION

Barth Royer
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Gary Jeffries
Dominion Resources Services
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817

ON BEHALF OF DOMINION RETAIL, INC.

Henry W. Eckhart
50 West Broad Street #2117
Columbus, OH 43215

ON BEHALF OF THE SIERRA CLUB, OHIO CHAPTER, AND THE NATURAL RESOURCES DEFENSE COUNCIL

Langdon D. Bell
Bell & Royer Co., LPA
33 South Grant Ave.
Columbus, OH 43215

Kevin Schmidt
The Ohio Manufacturers' Association
33 North High Street
Columbus, OH 43215

ON BEHALF OF THE OHIO MANUFACTURERS' ASSOCIATION

Larry Gearhardt
Ohio Farm Bureau Federation
280 North High Street, P.O. Box 182383
Columbus, OH 43218

ON BEHALF OF THE OHIO FARM BUREAU FEDERATION

Keith C. Nusbaum
Sonnenschein Nath & Rosenthal
1221 Avenue of the Americas
New York, NY 10020-1089

Clinton A. Vince
Presley R. Reed
Emma F. Hand
Ethan E. Rii
Daniel D. Barnowski
Douglas G. Bonner
Sonnenschein Nath & Rosenthal
1301 K Street NW
Suite 600, East Tower
Washington, DC 20005

ON BEHALF OF ORMET PRIMARY ALUMINUM CORPORATION

Stephen J. Romeo
Scott DeBroff
Alicia R. Peterson
Smigel, Anderson & Sacks
River Chase Office Center
4431 North Front Street
Harrisburg, PA 17110

Benjamin Edwards
Law Offices of John L. Alden
One East Livingston Ave.
Columbus, OH 43215

ON BEHALF OF CONSUMERPOWERLINE

Grace C. Wung
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005

Douglas M. Mancino
McDermott Will & Emery LLP
2049 Century Park East
Suite 300
Los Angeles, CA 90067

Steve W. Chriss
Manager, State Rate Proceedings
Wal-Mart Stores, Inc.
2001 SE 10th Street
Bentonville, AR 72716

ON BEHALF OF THE WAL-MART STORES EAST LP, MACY'S INC., AND SAM'S CLUB EAST, LP

Sally W. Bloomfield
Terrence O'Donnell
Bricker & Eckler
100 South Third Street
Columbus, OH 43215

ON BEHALF OF AMERICAN WIND ENERGY ASSOCIATION, WIND ON THE WIRES AND OHIO ADVANCED ENERGY

C. Todd Jones
Christopher Miller
Gregory Dunn
Andre Porter
Schottenstein Zox and Dunn Co., LPA
250 West Street
Columbus, OH 43215

ON BEHALF OF THE ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES OF OHIO

Douglas M. Mancino
McDermott Will & Emery LLP
2049 Century Park East
Suite 3800
Los Angeles, CA 90067

Gregory K. Lawrence
McDermott Will & Emery LLC
28 State Street
Boston, MA 02109

Steven Huhman
Vice President
MSCG
200 Westchester Ave.
Purchase, NY 10577

ON BEHALF OF MORGAN STANLEY CAPITAL GROUP, INC.

Glenn D. Magee
Abbott Nutrition
6480 Busch Blvd.
Columbus, OH 43229

ON BEHALF OF ABBOTT NUTRITION

Cheryl Maxfield
John Jones
Thomas Lindgren
Werner Margard
Duane Luckey
Assistant Attorneys General
Public Utilities Section
180 East Broad Street
Columbus, OH 43215

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

Kimberly Bojko
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

Greta See
Attorney Examiner
Public Utilities Commission of Ohio
180 East Broad Street, 12th Floor
Columbus, OH 43215

ATTORNEY EXAMINERS

{C30008: }

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of Agel Cox, dba Cox's Auction House, Notice of Apparent Violation and Intent to Assess Forfeiture	)))	Case No. 03-1138-TR-CVF (OH3203000268D)

FINDING AND ORDER

The Commission finds:

(1) On July 29, 2002, the staff issued to Agel Cox, dba Cox's Auction House (Agel Cox, respondent), a Notice of Apparent Violation and Intent to Assess Forfeiture in the amount of $150.00, for violation of Code of Federal Regulations (C.F.R.) §395.8(A) (no log book) and §391.41(A) (no medical certificate). A conference was requested, but did not result in a resolution of the issues. On April 10, 2003, the staff issued a Notice of Preliminary Determination, and on May 9, 2003, respondent requested an administrative hearing in accordance with the provisions of the Ohio Administrative Code (O.A.C.). Thereafter, a prehearing conference and a hearing were scheduled in the matter.

(2) On August 12, 2003, respondent filed a motion to dismiss the notice of preliminary determination. In the motion, respondent initially stated that, at the time the vehicle inspection was conducted on May 2, 2002, respondent was engaged in operations that involved "not-for-hire" transportation and that the weight of respondent's vehicle was 24,000 pounds according to the vehicle inspection report. Respondent also noted that, under Section 4923.20(B), Revised Code (4923.20), the Commission is vested with authority to adopt and enforce safety rules concerning the safety of operation of commercial motor vehicles by private motor carriers, except that such rule shall not affect any rights or duties granted or imposed by Chapter 4511, Revised Code. Respondent then argued that Rule 4901:2-5-01(B), O.A.C., incorporates the definitions contained in Chapter 4923, Revised Code, regarding "private" motor carriers, and excludes from the definition of "motor vehicle" any vehicle operated within Ohio in intrastate commerce by a private motor carrier as defined in 4923.20, which is not a commercial motor vehicle as defined in 49 C.F.R. §383.5. Respondent argued that 49 C.F.R. §383.5 defines

commercial motor vehicle as a vehicle having a gross vehicle weight of 26,001 pounds or more. Respondent stated that the inspection report reflects respondent's vehicle as falling short of this weight requirement and, consequently, operation of the vehicle by the respondent was outside the Commission's jurisdiction.

(3) On August 26, 2003, the staff of the Commission's Transportation Department (staff) filed a memorandum contra respondent's motion to dismiss. In the memorandum contra, staff stated that, under the statutory authority of Section 4919.79(B), Revised Code (4919.79), the Commission adopted Rules 4901:2-5-01 and 4901:2-5-02, O.A.C. Staff stated that "Motor Carrier" is defined in 4901:2-5-01(A), O.A.C., to include "any and all carriers by motor vehicle operating in Ohio in interstate commerce which are subject to the regulations contained in Title 49, Parts 171 through 190, 383, or 390 through 397 CFR...." Staff stated that significant portions of the Federal Motor Carrier Safety Regulations (FMCSRs) are also adopted in Rule 4901:2-5-02, O.A.C., and that among the CFR provisions adopted is 49 C.F.R. §390.5, definitions for the FMCSRs. Staff noted that according to 49 C.F.R. §390.5, as adopted in Ohio, "Interstate Commerce" means, in part, transportation between a place in a state and a place outside of a state. Further, 49 C.F.R. §390.5 specifies that a "Commercial Motor Vehicle" is a vehicle with a gross vehicle weight of 10,001 pounds or more. Staff noted that the portion of Rule 4901:2-5-01(B), O.A.C., cited to by respondent deals with intrastate commerce. Moreover, staff noted that 4923.20 is not invoked as an exception for private motor carriers unless the vehicle is being operated within Ohio in intrastate commerce. Staff stated that, as listed on the inspection report, Agel Cox's point of origin was Mansfield, Ohio and his destination was South Shore, Kentucky. Staff noted that the nature of the trip in interstate commerce does not change because the vehicle has not reached its destination. Staff argued that the movement by respondent of a vehicle with a weight of 24,000 pounds in interstate commerce, which is over twice the weight regulation under the definition of a commercial motor vehicle in 49 C.F.R. §390.5, falls within the Commission's safety jurisdiction over interstate commerce.

(4) Respondent filed a reply to staff's memorandum contra on September 2, 2003. In the reply, respondent initially stated that it should be noted the staff concedes there would be no violation if, in fact, Agel Cox was not operating in "interstate" commerce. Respondent stated that, although the staff acknowledges that the trip involved originated in Mansfield, Ohio, and terminated in Ohio before ever crossing a state line, staff argued that the trip "qualified" as an interstate trip. Further, although the vehicle was placed out of service because of an alleged violation, the staff position presumes that the driver, upon being informed that an interstate trip was not permissible, would not have terminated the trip by his own volition and returned to Mansfield, Ohio. Respondent noted that there was no bill of lading or other shipping document involved and the only factual document cited by the staff is its own investigating officer's inspection report. Respondent argued that the trip was intrastate commerce and that it could never have been interstate commerce because the staff investigating officer, rightly or wrongly, placed the vehicle out of service and terminated the trip. In other words, respondent argued that, since respondent was engaged in operations as a private carrier, the movement of his vehicle did not become interstate in nature until a state line was crossed. Respondent maintained that, by definition, the movement of the vehicle became "intrastate" in nature when it was placed out of service and the movement would have been changed if, at any time, respondent had changed intentions and returned to Mansfield voluntarily. Respondent argued that, because this movement was not-for-hire, there was no obligation upon respondent to continue the transportation.

Respondent also argued that even if there had been an interstate movement, no violation occurred. In this regard, respondent stated that 4923.20 provides the only statutory basis for the Commission's jurisdiction over private carriers. Respondent stated that staff's reliance upon 4919.79 is misplaced, but even if it were applicable to private carriers of property, it is a general provision that must be subordinated to the more specific provisions of 4923.20. Respondent observed that 4919.79 is not a stand-alone provision, but a portion of Chapter 4919. Accordingly, while 4919.79 may contain a provision permitting the Commission to adopt safety rules applicable to the highway transportation of persons or property in interstate commerce, that provision cannot be read in a vacuum. Respondent maintained that it must be read within the constraints of the definition section contained in that chapter which defines motor carrier as either a common carrier of property or a contract carrier of property, and defines motor vehicle as any vehicle being operated for the purpose of transporting property for hire (Section 4919.75, Revised Code). Respondent argued that Agel Cox does not fall into either of these definitional categories. Moreover, respondent argued that, in light of the fact that there are no definitional distinctions inserted in 4919.79 and the fact that both 4919.79 and 4923.20 were amended at the same time in Amended Substitute House Bill 600 in June 2000, it cannot be suggested that the legislature intended to change those definitional distinctions through any amendment to 4919.79.

Respondent stated that the title to 4923.20 is "Rules for Not-for-hire Carriers." Respondent thus argued that the legislature clearly anticipated that "for-hire" carriers would be governed by the provisions of 4919.79; and private carriers would be governed by the provisions of 4923.20. Respondent noted that, although both statutes were subsequently expanded to apply to carriers of non-hazardous materials, there is no manifestation of any intent to transfer jurisdiction over private carriers from 4923.20 to 4919.79. Respondent argued that, to the contrary, 4923.20 contains a specific definition limiting its application to private carriers operating not-for-hire, and excluding all private carriers operating for-hire.

Finally, respondent argued that even the Commission does not concur with the staff's interpretation of the statutory provisions. Respondent noted that, in Rule 4901:2-5-01, O.A.C., the Commission defines motor carriers subject to the safety rules adopted. But Rule 4901:2-5-01(A), O.A.C., includes its own definitional section limiting applicability of the rules to private motor carriers as defined in 4923.20. Respondent stated that there is no mention of 4919.79.

(5) On September 11, 2003, the parties filed a stipulation of facts. In the stipulation, the parties agreed to the facts in the case. The parties also agreed that the violations cited in the case occurred as reflected in the inspection report and that the only outstanding issue in the case is the legal argument addressing

the question of Commission jurisdiction, as highlighted in the motion to dismiss filed on August 12, 2002 and the pleadings in reply.

(6) Agel Cox is contesting the case on two points. First, he contends that the movement was intrastate because it did not cross the Ohio/Kentucky border. Therefore, the exemption for not-for-hire private carriers in Rule 4901:2-5-01(B), O.A.C., is applicable. That exemption, based on the definition of private carriers in 4923.20, states that a not-for-hire private carrier in intrastate commerce is not a commercial motor vehicle, as defined in 49 C.F.R. §383.5.[1] Staff, for its part, maintains that Agel Cox was operating in interstate commerce, even though his trip was interrupted, and that the 10,001 pound limit in 49 C.F.R. §390.5[2] should be used to gage the weight of regulation for his truck.

Second, Mr. Cox contends that even if there was an interstate movement, no actual violation occurred because 4923.20 provides the only basis for Commission jurisdiction over not-for-hire carriers. Although Mr. Cox does not state a direct link between 4923.20 and the federal safety rules, he appears to be saying that, for not-for-hire private carriers, the federal safety rules are based on 4923.20, not 4919.79. Further, Mr. Cox states that, while 4923.20(B) allows the Commission to adopt rules for such private carriers, it also states that such rules shall not affect the rights of a motor carrier operator under Chapter 4511, Revised Code (traffic laws). Mr. Cox, however, does not go on to assert that any Commission rule affects his rights or duties as an operator under Chapter 4511, Revised Code.

(7) The parties have stipulated to the facts in the case and the violations as reflected in the inspection report. The inspection report notes that the transportation performed by the respondent was a not-for-hire movement originating in Mansfield, Ohio, and destined for South Shore, Kentucky.

1 49 C.F.R. §385.5 deals with Commercial Driver's License Standards. This C.F.R. provision defines commercial motor vehicle as a vehicle having a gross vehicle weight of 26,001 pounds or more.

2 49 C.F.R. §390.5, cited by staff, is from the general chapter covering Federal motor carrier safety regulations. This C.F.R. provision defines a commercial motor vehicle as a vehicle having a gross vehicle weight of 10,001 pounds or more. Further, 49 C.F.R. §390.5 defines interstate commerce, not only as transportation between states, but as transportation between two places in a state and part of transportation originating or terminating outside of a state.

Clearly, even though still in Ohio when the vehicle inspection took place, under the definition of interstate commerce as set forth in 49 C.F.R. §390.5, respondent was part of transportation terminating outside of Ohio. Therefore, respondent was engaged in interstate transportation, and was performing that transportation with a motor vehicle weighing more than 10,001 pounds. As noted by staff in its pleading, the exemption set forth in Rule 4901:2-5-01(B), O.A.C., applies only to vehicles operated by private motor carriers and weighing less than 26,001 pounds, as defined in 4923.20 and 49 C.F.R. §385.5, and operating in intrastate commerce.

The respondent's attempted reliance upon 4923.20 is misplaced. Section 4923.20, by its express terms, defines "commerce" as "trade, traffic, and transportation solely within this state." Trade, traffic and transportation solely within this state is *intrastate* commerce. The Commission has found above that Mr. Cox was engaged in *interstate* commerce. The plain language of 4923.20 demonstrates that it is inapplicable to the instant case.

Plain and unambiguous statutory authority leaves no occasion to resort to other rules of construction. *State ex rel. Stanton v. Zangerle*, 117 Ohio St. 436, 159 N.E. 823 (1927); *Swetland v. Miles*, 101 Ohio St. 501, 130 N.E. 22 (1920). Because the plain language of 4923.20 clearly states that the provisions apply to intrastate commerce rather than interstate commerce, the respondent's attempt to divine the intent of the legislature in House Bill 600 or to rely upon the title of a particular section is unnecessary and misguided.

Respondent's unsupported assertion to the contrary, Section 4919.79, Revised Code, standing alone, provides the sole, necessary and sufficient statutory authority of the Commission in this case. Section 4919.79(B) provides that "[t]he Commission may adopt safety rules applicable to the highway transportation of persons or property in interstate commerce, which transportation takes place into or through this state." Pursuant to this authority, the Commission adopted Rule 4901:2-5-04(B), O.A.C., which requires motor carriers in interstate commerce to comply with the FMCSR and stipulates that a violation of the FMCSR constitutes a violation of the Commission's rules.

(8) Accordingly, the Commission concludes that it does have jurisdiction over the respondent under the circumstances presented in this case and that the exemption from classification as a motor vehicle under Rule 4901:2-5-01(B), O.A.C., does not apply in respondent's case because respondent was operating in interstate commerce. Respondent, therefore, should be assessed the violations as charged.

(9) Pursuant to Section 4919.99, Revised Code, respondent must pay the state of Ohio the assessed civil forfeiture, $150.00, for violation of the following Title 49 C.F.R. Code Sections: 395.8(A) and 391.41(A).

(10) Rule 4901:2-7-22, O.A.C., requires that payment of any forfeiture be made by check or money order made payable to "Treasurer, State of Ohio", and shall be mailed or delivered to: Transportation Department, Public Utilities Commission of Ohio, 180 E. Broad Street, 14th Floor, Columbus, Ohio 43266-0573.

It is, therefore,

ORDERED, That Agel Cox, dba Cox's Auction House, pay the assessed amount of $150.00 for violation of the Title 49 C.F.R. sections listed in this entry within 15 days to the state of Ohio, as set forth in Findings (9) and (10). It is, further,

ORDERED, That the Attorney General take appropriate action to enforce this order as provided by law. It is, further,

ORDERED, That this case be closed of record. It is, further, ORDERED, That a copy of this entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Donald L. Mason

Clarence D. Rogers, Jr.

KKS/vrm

Entered in the Journal
NOV 0 6 2003

Reneé J. Jenkins
Secretary

77

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of an Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.	)))))	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.	))))	Case No. 08-918-EL-SSO

OPINION AND ORDER

The Commission, considering the above-entitled applications and the record in these proceedings, hereby issues its opinion and order in this matter.

APPEARANCES:

Marvin I. Resnik and Steven T. Nourse, American Electric Power Service Corporation, One Riverside Plaza, Columbus, Ohio 43215, and Porter, Wright, Morris & Arthur, by Daniel R. Conway, 41 South High Street, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

Richard Cordray, Attorney General of the State of Ohio, by Duane W. Luckey, Section Chief, and Warner L. Margard, John H. Jones, and Thomas G. Lindgren, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, the Office of the Ohio Consumers' Counsel, by Maureen R. Grady, Terry L. Etter, Jacqueline Lake Roberts, Michael E. Idzkowski and Richard C. Reese, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Columbus Southern Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

Chester, Wilcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matthew S. White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of The Kroger Company.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Lisa G. McAlister, and Joseph M. Clark, 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215-3927, on behalf of Ohio Environmental Council and Dominion Retail, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, Mike Settineri and Betsy L. Elder, 52 East Gay Street, Columbus, Ohio 43216-1008, and Bobby Singh, Integrys Energy, 300 West Wilson Bridge Road, Worthington, Ohio 43085, on behalf of Integrys Energy.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, Mike Settineri and Betsy L. Elder, 52 East Gay Street, Columbus, Ohio 43216-1008, and Cynthia A. Fonner, Constellation Energy Group, Inc., 550 West Washington Boulevard, Suite 3000, Chicago, Illinois 60661, on behalf of Constellation NewEnergy, Inc., and Constellation Energy Commodities Group, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, Mike Settineri and Betsy L. Elder, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of EnerNoc, Inc. and Consumer Powerline, Inc.

Schottenstein, Zox & Dunn Co., LPA, by Gregory H. Dunn, Christopher L. Miller, and Andre T. Porter, 250 West Street, Columbus, Ohio 43215, on behalf of the Association of Independent Colleges and Universities of Ohio.

Bricker & Eckler, Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio, and Richard L. Sites, 155 East Broad Street, 15th Floor, Columbus, Ohio 43215-3620, on behalf of Ohio Hospital Association.

Bell & Royer Co., LPA, by Langdon D. Bell, 33 South Grant Avenue, Columbus, Ohio 43215-3927, and Kevin Schmidt, 33 North High Street, Columbus, Ohio 43215-3005, on behalf of Ohio Manufacturers' Association.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Direct Energy Services, LLC.

McDermott, Will & Emery, LLP, by Grace C. Wung, 600 Thirteenth Street, N.W., Washington, D.C. 20005, on behalf of Wal-Mart Stores East, LP, and Sam's East, Inc., LP, Macy's, Inc., and BJ's Wholesale Club, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216-1008, on behalf of Ohio Association of School Business Officials, Ohio School Boards Association, and Buckeye Association of School Administrators.

Michael R. Smalz and Joseph E. Maskovyak, Ohio State Legal Services Association, 555 Buttles Avenue, Columbus, Ohio 43215, on behalf of Appalachian People's Action Coalition.

OPINION:

I. HISTORY OF PROCEEDINGS

On July 31, 2008, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (jointly, AEP-Ohio or the Companies) filed an application for a standard service offer (SSO) pursuant to Section 4928.141, Revised Code. The application is for an electric security plan (ESP) in accordance with Section 4928.143, Revised Code.

By entries issued August 5, 2008, and September 5, 2008, the procedural schedule in this matter was established, including the scheduling of a technical conference and the evidentiary hearing. A technical conference was held regarding AEP-Ohio's application on August 19, 2008. A prehearing conference was held on November 10, 2008, and the evidentiary hearing commenced on November 17, 2008, and concluded on December 10, 2008. The Commission also scheduled five local public hearings throughout the Companies' service area.

The following parties were granted intervention by entries dated September 19, 2008, and October 29, 2008: Ohio Energy Group (OEG); the Office of the Ohio Consumers' Counsel (OCC); Kroger Company (Kroger); Ohio Environmental Council (OEC); Industrial Energy Users-Ohio (IEU); Ohio Partners for Affordable Energy (OPAE); Appalachian People's Action Coalition (APAC); Ohio Hospital Association (OHA); Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (Constellation); Dominion Retail, Inc. (Dominion); Natural Resources Defense Council (NRDC); Sierra Club – Ohio Chapter (Sierra); National Energy Marketers Association (NEMA); Integrys Energy Service, Inc. (Integrys); Direct Energy Services, LLC (Direct Energy); Ohio Manufacturers' Association (OMA); Ohio Farm Bureau Federation (OFBF); American Wind Energy Association, Wind on Wires, and Ohio Advance Energy (Wind Energy); Ohio Association of School Business Officials, Ohio School Boards Association, and Buckeye Association of School Administrators (collectively, Schools); Ormet Primary Aluminum Corporation (Ormet); Consumer Powerline; Morgan Stanley Capital Group Inc.; Wal-Mart Stores East, LP and Sam's East, Inc., Macy's, Inc., and BJ's Wholesale Club, Inc. (collectively, Commercial Group); EnerNoc, Inc.; and the Association of Independent Colleges and Universities of Ohio.

At the hearing, AEP-Ohio offered the testimony of 11 witnesses in support of the Companies' application, 22 witnesses testified on behalf of various intervenors, and 10 witnesses testified on behalf of Staff. At the local public hearings held in this matter, 124 witnesses testified. Briefs were filed on December 30, 2008, and reply briefs were filed on January 14, 2009.

A. Summary of the Local Public Hearings

Five local public hearings were held in order to allow CSP's and OP's customers the opportunity to express their opinions regarding the issues in this proceeding. The hearings were held in the evenings in Marietta, Canton, Lima, and Columbus. Additionally, an afternoon hearing was held in Columbus. At those hearings, public testimony was heard from 21 customers in Marietta, 21 customers in Canton, 17 customers in Lima, 25 customers at the afternoon hearing in Columbus and 40 customers at the evening hearing in Columbus. In addition to the public testimony, numerous letters were filed in the docket by customers stating concern about the applications.

The principal concern expressed by customers, both at the public hearings and in letters, was over the increases in customer rates that would result from the approval of the ESP applications. Witnesses stated that any increase in rates would negatively impact low-income customers, the elderly, and those on fixed incomes. Customers cited the recent downturn in the economy as the primary source of their apprehension. It was noted by many at the hearings that customers are also facing increases in other utility charges, gasoline, food, and medical expenses and that the proposed increases would cause undue hardship. On the other hand, some witnesses at the public hearings and in the letters filed in the docket acknowledged AEP-Ohio as a good corporate partner in their respective communities.

B. Procedural Matters

1. Motion to Strike

On January 7, 2009, AEP-Ohio filed a motion to strike a section of the brief jointly filed by OCC and Sierra (collectively, OCEA). More specifically, AEP-Ohio filed to strike the sentence starting on line 2 of page 63 ["In fact,"] through the first two lines of page 64, including footnotes 244 to 248. AEP-Ohio argues that the above-cited portion of OCEA's brief, regarding the deferral of fuel expenses and the carrying charges and the tax effect thereof, relies upon testimony offered by OCC witness Effron in the FirstEnergy Distribution Case.[1] AEP-Ohio notes that Mr. Effron was not a witness in this ESP proceeding and, therefore, was not available for the Companies, or any other party, to cross-examine. Accordingly, the Companies argue that consideration of Mr. Effron's testimony in this matter would be a denial of the Companies' due process rights, and request that the specified portion of OCEA's brief be stricken. On January 14, 2009, OCC filed a memorandum contra the motion to strike. OCC agreed to withdraw the second and third sentences on page 63, the quoted testimony of Mr. Effron on page 63, and footnotes 244 to 248 on pages 63 and 64. However, OCC contends that AEP-Ohio's

1 *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and Toledo Edison Company*, Case No. 07-551-EL-AIR, et al. (FirstEnergy Distribution Case).

motion is overly broad and the remaining portion of the brief that AEP-Ohio seeks to strike is appropriate legal argument regarding deferrals on a net-of-tax basis and, therefore, should remain. AEP-Ohio filed a reply on January 16, 2009. AEP-Ohio first notes that because the memorandum contra was filed by OCC only and Sierra did not respond to the motion, it is not clear whether Sierra is also willing to withdraw the portions of the brief listed in the memorandum contra. AEP-Ohio also argues that the remaining portion of this particular argument in OCEA's brief should be stricken with the removal of the footnotes. With this removal, AEP-Ohio then argues that there is no longer any support in the brief for such arguments. By letter docketed January 22, 2009, Sierra confirmed that it joins OCC in OCC's withdrawal of the limited portions of the OCEA brief as stated by OCC in its January 14, 2009, reply.

The Commission grants, in part, and denies, in part, AEP-Ohio's motion to strike OCEA's brief. The Commission agrees with AEP-Ohio and OCC that the use of Mr. Effron's testimony filed in the FirstEnergy Distribution Case in this proceeding was inappropriate and, therefore, we accept OCC's and Sierra's withdrawal of that portion of their brief. As for the remaining portion of OCEA's brief that AEP-Ohio has requested to be stricken, we agree with OCC that the language that discusses the calculation of deferred fuel expenses on a net-of-tax basis could be construed to be legal argument on brief, which rationalized why the issue should be decided in OCEA's favor. Moreover, we can surmise that if OCEA had recognized its error in the drafting stage of the brief, that OCEA would have drafted similar legal arguments without referencing Mr. Effron's testimony. Accordingly, we will only strike the portions of OCEA's brief that OCC and Sierra have agreed to withdraw.

2. Motion for AEP-Ohio to Cease and Desist

On February 25, 2009, Integrys filed a motion with the Commission requesting that the Commission direct AEP-Ohio to cease and desist the Companies' refusal to process SSO retail customer applications to enroll in the Interruptible Load for Reliability (ILR) Program of PJM Interconnection, LLC (PJM). Integrys also filed a request for an expedited ruling; however, Integrys represented that counsel for AEP-Ohio objected to the expedited ruling request. Integrys is a registered curtailment service provider with PJM and as such receives notices from PJM and coordinates with retail customers to curtail load. Integrys argues that retail customer participation in PJM demand response programs was raised in the Companies' ESP application and has not yet been decided by the Commission. For this reason, Integrys contends that AEP-Ohio lacks the authority to refuse to process the ILR applications and the denial of the application violates the Companies' tariffs. Two other curtailment service providers in the AEP-Ohio service territory, Constellation and KOREnergy, Ltd., filed memoranda in support of Integrys' motion.[2]

On March 2, 2009, AEP-Ohio filed a memorandum contra the motion to cease and desist. AEP-Ohio affirms the arguments made in this proceeding to prohibit retail customers from participating in PJM's demand response programs. Further, AEP-Ohio argues, among other things, that despite the claims of Integrys andConstellation, AEP-Ohio is providing, in a timely manner, the load data required for customer enrollment in the PJM ILR program, informs the customer that AEP-Ohio is not consenting to the customer's participation in the program, and discloses that the matter is currently pending before the Commission.

On March 9, 2009, Integrys and Constellation filed a withdrawal of the motion to direct AEP-Ohio to cease and desist. The movants state that despite AEP-Ohio's assertions that the applicants were not eligible to participate in PJM's demand response programs, PJM rejected AEP-Ohio's opposition to the ILR applications and processed the ILR applications. Integrys and Constellation further state that, except for two pending applications, all their customers in the AEP-Ohio service territory have been certified for participation in the PJM programs.

As the parties acknowledge, this matter was presented for the Commission's consideration as part of the ESP application. The Commission, therefore, specifically addresses and discusses the issues raised concerning SSO retail customer participation in PJM demand response programs at Section VI.C of this opinion and order. Accordingly, we grant Integrys' and Constellation's request to withdraw their motion to cease and desist.

II. DISCUSSION

A. Applicable Law

Chapter 4928 of the Revised Code provides an integrated system of regulation in which specific provisions were designed to advance state policies of ensuring access to adequate, reliable, and reasonably priced electric service in the context of significant economic and environmental challenges. In reviewing AEP-Ohio's application, the Commission is cognizant of the challenges facing Ohioans and the electric industry and will be guided by the policies of the state as established by the General Assembly in Section 4928.02, Revised Code, which was amended by Senate Bill 221 (SB 221).

Section 4928.02, Revised Code, states that it is the policy of the state, inter alia, to:

2 KOREnergy, Ltd., has not filed to intervene in this proceeding and, therefore, its memoranda in support will not be considered.

(1) Ensure the availability to consumers of adequate, reliable, safe, efficient, nondiscriminatory, and reasonably priced retail electric service.

(2) Ensure the availability of unbundled and comparable retail electric service.

(3) Ensure diversity of electric supplies and suppliers.

(4) Encourage innovation and market access for cost-effective supply- and demand-side retail electric service including, but not limited to, demand-side management (DSM), time-differentiated pricing, and implementation of advanced metering infrastructure (AMI).

(5) Encourage cost-effective and efficient access to information regarding the operation of the transmission and distribution systems in order to promote both effective customer choice and the development of performance standards and targets for service quality.

(6) Ensure effective retail competition by avoiding anticompetitive subsidies.

(7) Ensure retail consumers protection against unreasonable sales practices, market deficiencies, and market power.

(8) Provide a means of giving incentives to technologies that can adapt to potential environmental mandates.

(9) Encourage implementation of distributed generation across customer classes by reviewing and updating rules governing issues such as interconnection, standby charges, and net metering.

(10) Protect at-risk populations including, but not limited to, when considering the implementation of any new advanced energy or renewable energy resource.

In addition, SB 221 amended Section 4928.14, Revised Code, which now provides that on January 1, 2009, electric utilities must provide consumers with an SSO, consisting of either a market rate offer (MRO) or an ESP. The SSO is to serve as the electric utility's default SSO. The law provides that electric utilities may apply simultaneously for both an

MRO and an ESP; however, at a minimum, the first SSO application must include an application for an ESP. Section 4928.141, Revised Code, specifically provides that an SSO shall exclude any previously authorized allowances for transition costs, with such exclusion being effective on and after the date that the allowance is scheduled to end under the electric utility's rate plan. In the event an SSO is not authorized by January 1, 2009, Section 4928.141, Revised Code, provides that the current rate plan of an electric utility shall continue until an SSO is authorized under either Section 4928.142 or 4928.143, Revised Code.

AEP-Ohio's application in this proceeding proposes an ESP, pursuant to Section 4928.143, Revised Code. Paragraph (B) of Section 4928.141, Revised Code, requires the Commission to hold a hearing on an application filed under Section 4928.143, Revised Code, to send notice of the hearing to the electric utility, and to publish notice in a newspaper of general circulation in each county in the electric utility's certified territory.

Section 4928.143, Revised Code, sets out the requirements for an ESP. Under paragraph (B) of Section 4928.143, Revised Code, an ESP must include provisions relating to the supply and pricing of generation service. The plan, according to paragraph (B)(2) of Section 4928.143, Revised Code, may also provide for the automatic recovery of certain costs, a reasonable allowance for certain construction work in progress (CWIP), an unavoidable surcharge for the cost of certain new generation facilities, conditions or charges relating to customer shopping, automatic increases or decreases, provisions to allow securitization of any phase-in of the SSO price, provisions relating to transmission-related costs, provisions related to distribution service, and provisions regarding economic development.

The statute provides that the Commission is required to approve, or modify and approve the ESP, if the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. In addition, the Commission must reject an ESP that contains a surcharge for CWIP or for new generation facilities if the benefits derived for any purpose for which the surcharge is established are not reserved or made available to those that bear the surcharge.

The Commission may, under Section 4928.144, Revised Code, order any just and reasonable phase-in of any rate or price established under Section 4928.141, 4928.142, or 4928.143, Revised Code, including carrying charges. If the Commission does provide for a phase-in, it must also provide for the creation of regulatory assets by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount, and shall authorize the deferral's collection through an unavoidable surcharge.

By finding and order issued September 17, 2008, in Case No. 08-777-EL-ORD (SSO Rules Case), the Commission adopted new rules concerning SSO, corporate separation, and reasonable arrangements for electric utilities pursuant to Sections 4928.06, 4928.14, 4928.17, and 4905.31, Revised Code. The rules adopted in the SSO Rules Case were subsequently amended by the entry on rehearing issued February 11, 2009.

B. State Policy – Section 4928.02, Revised Code

AEP-Ohio submits that, contrary to the views of the intervenors, Section 4928.02, Revised Code, does not impose additional requirements on an ESP and the ESP should not be modified or rejected because it does not satisfy all of the policies of the state. According to the Companies, "[t]he public interest is served if the ESP is more favorable in the aggregate than the expected results of an MRO" (Cos. Br. at 15).

OHA asserts that the Commission "must view the 'more favorable in the aggregate' standard through the lens of the overriding 'public interest,'" and that the public interest cannot be served if the result is not reasonable (OHA Br. at 10). OPAE/APAC seems to state that the ESP must be more favorable in the aggregate and comply with the state policy, but also recognizes that state policies are to be used to guide the Commission in its approval of an ESP (OPAE/APAC Br. at 3). OEG agrees that the policy objectives are required to be met prior to the approval of an ESP (OEG Br. at 1). The Commercial Group submits that costs must be properly allocated to ensure that the policies of the state are met, to improve price signals, and to ensure effective retail competition (Commercial Group Br. at 5).

In its reply brief, AEP-Ohio maintains that its proposed ESP is consistent with the policy of the state as delineated in Sections 4928.02(A) through (N), Revised Code, and is "worthy of approval, without modification" (Cos. Reply Br. a 7). According to the Companies, the ESP advances the general policy objectives of the policy of the state (Id. at 6-7). Furthermore, the Companies argue that the concerns raised by some intervenors regarding the impact of AEP-Ohio's ESP on the difficult economic conditions would have the Commission ignore the statutory standard for approving an ESP and, instead, establish rates based on the current economic conditions (Cos. Reply Br. at 7). While the Companies believe that aspects of the proposed ESP address these concerns (e.g., fuel deferrals), they argue that their SSO must be established in accordance with applicable ESP statutory provisions (Id.).

As explained above, and previously in our opinion and order issued in the FirstEnergy ESP proceeding,[3] the Commission believes that the state policy codified by the General Assembly in Chapter 4928, Revised Code, sets forth important objectives,

3 *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 08-935-EL-SSO, Opinion and Order at 12 (December 19, 2008) (FirstEnergy ESP Case).

which the Commission must keep in mind when considering all cases filed pursuant to that chapter of the code. As noted in the FirstEnergy ESP case, in determining whether the ESP meets the requirements of Section 4928.143, Revised Code, we take into consideration the policy provisions of Section 4928.02, Revised Code, and we use these policies as a guide in our implementation of Section 4928.143, Revised Code. Accordingly, we agree with AEP-Ohio and will use these policies as a guide in our decision-making in this case, just as we did in the FirstEnergy ESP Case (Cos. Reply Br. at 6).[4] The Commission has reviewed the ESP proposal presented by AEP-Ohio, as well as the issues raised by the various intervenors, and we believe that, with the modifications set forth herein, we have appropriately reached a conclusion advancing the public's interest.

C. Application Overview

In their application, the Companies are requesting authority to establish an SSO in the form of an ESP pursuant to the provisions of Sections 4928.141 and 4928.143, Revised Code. The proposed ESP is to be effective for a three-year period commencing January 1, 2009. According to the Companies, pursuant to the proposed ESP, the overall, estimated increases in total customer rates, including generation, transmission, and distribution, would be an average of 13.41 percent for CSP and 13 percent for OP in 2009, and 15 percent in 2010 and 2011 for both CSP and OP (Cos. Ex. 1, Exhibit DMR-1). The Companies also propose a 15 percent cap per year on the total allowable increases for each customer rate schedule should the actual costs be higher than expected, excluding transmission costs and costs associated with new government mandates (Cos. App. at 6).

III. GENERATION

A. Fuel Adjustment Clause (FAC)

The Companies contend that Section 4928.143(B)(2)(a), Revised Code, authorizes the implementation of a FAC mechanism to recover prudently incurred costs associated with fuel, including consumables related to environmental compliance, purchased power costs, emission allowances, and costs associated with carbon-based taxes and other carbon-related regulations (Cos. Ex. 7 at 4-7).

4 Some intervenors recognize that the state policy objective must be used as a guide to implement the ESP provision (IEU Br. at 19; OPAE/APAC Br. at 3).

1. FAC Costs

The Companies proposed to include in the FAC mechanism types of costs recovered through the electric fuel component (EFC) previously used in Ohio[5] (Cos. Ex. 7 at 3-4). In addition to those types of costs, the Companies stated that Section 4928.143(B)(2)(a), Revised Code, provides for a broader cost-based adjustment mechanism that authorizes the inclusion of all prudently incurred fuel, purchased power, and environmental components (Id. at 4). Companies' witness Nelson itemized and described the accounts that the Companies proposed to include in their FAC mechanism (Id. at 5-7).

Staff, OCC, and Sierra support the FAC mechanism that will be updated and reconciled quarterly (Staff. Ex. 8 at 3-4; OCEA Br. at 47-48, 67-68; OCC Ex. 11 at 4-5, 31-40). Specifically, Staff witness Strom testified that the costs proposed to be recovered through the FAC mechanism are appropriate and recovery of those costs through a FAC mechanism is logical (Staff Ex. 8 at 3). OCC and Sierra also agree that Section 4928.143(B)(2)(a), Revised Code, authorizes the enactment of a FAC mechanism to automatically recover certain prudently incurred costs (OCEA Br. at 47), and OCC does not seem to oppose the list of categories of accounts proposed to be included in the FAC by Companies witness Nelson (OCC Ex. 11 at 18-20). Additionally, Staff recommended that annual reviews of the prudency and appropriateness of the accounting of FAC costs be conducted (Staff Ex. 8 at 3-4), and OCC recommended that an interest charge be paid to customers on any over-recovered fuel costs in a quarterly period until the subsequent reconciliation occurs, similar to the carrying charge for any under-recovery that she believed the Companies were proposing to collect[6] (OCC Ex. 11 at 4). Kroger and IEU, however, seem to state that a FAC mechanism cannot be established until a cost-of-service or earnings test is completed (Kroger Br. at 9-10; IEU Br. at 12-15). IEU also questioned the appropriate term of the proposed FAC mechanism (IEU Br. at 13; Tr. Vol. IX at 143-146).

The Commission believes that the establishment of a FAC mechanism as part of an ESP is authorized pursuant to Section 4928.143(B)(2)(a), Revised Code, to recover prudently incurred costs associated with fuel, including consumables related to environmental compliance, purchased power costs, emission allowances, and costs associated with carbon-based taxes and other carbon-related regulations. Given that the FAC mechanism is authorized pursuant to the ESP provision of SB 221, we will limit our authorization, at this time, to the term of the ESP.

5 See Sections 4905.01(G), 4905.66 through 4905.69, and 4909.159, Revised Code (repealed January 1, 2001); Chapter 4901:1-11, Ohio Administrative Code (O.A.C.) (rescinded November 27, 2003).

6 In AEP's Brief, the Companies clarified that they did not propose to collect a carrying charge on any FAC under-recovery in one quarterly period until a reconciliation in the subsequent period occurred. The only carrying charge that they proposed was on the FAC deferrals that would not be collected until 2012-2018 (Cos. Br. at 27).

With regard to interest charges assessed on any over- or under-recoveries for FAC costs within the quarterly period until the subsequent reconciliation occurs, we agree with OCC witness Medine that symmetry should exist if interest charges were assessed on any under-recoveries (Tr. Vol. VI at 210). However, we do not conclude that any interest charges on either over- or under-recoveries are necessary as a deterrent to the creation of over- or under-recoveries as OCC witness Medine suggests (Id. at 210-211). As proposed by the Companies and supported by others, the FAC mechanism includes a quarterly reconciliation to actual FAC costs incurred, which will establish the new charge for the subsequent quarter. These quarterly adjustments combined with the annual review proposed by Staff to review the appropriateness of the accounting of the FAC costs and the prudency of decisions made are sufficient to control the over- or under-recoveries that may occur within a particular quarter. Therefore, we find that the FAC mechanism with quarterly adjustments as proposed by the Companies, as well as an annual prudency and accounting review recommended by Staff, is reasonable and should be approved and implemented as set forth herein.

(a) Market Purchases

As part of the FAC costs, the Companies proposed to purchase incremental power on a "slice of the system basis" equal to 5 percent of each company's load in 2009, 10 percent in 2010, and 15 percent in 2011 (Cos. Ex. 2-A at 21). The Companies argue that while these purchases will be included in the FAC mechanism, as the appropriate recovery mechanism for these costs, the purchases are permitted as a discretionary component of an ESP filing authorized by Section 4928.143(B)(2), Revised Code, which states: "The plan may provide for or include, without limitation, any of the following:" (emphasis added) (Cos. Br. at 37). To support its proposal, AEP-Ohio states that the purchases reflect the continued transition to market rates and represent an appropriate recognition of the Companies' incorporation of the loads of Ormet Primary Aluminum Company (Ormet) and the certified territory formerly served by Monongahela Power Company (MonPower) (Cos. Ex. 2-A at 21-22). The Companies further assert that, during the ESP, they should be able to continue to recover a market-based generation price for serving these loads, as was previously authorized by the Commission during the RSP period.

Staff supported market purchases sufficient to meet the additional load responsibilities that the Companies assumed for the addition of the former MonPower customers and Ormet to the Companies' system, which equals approximately 7.5 percent of the Companies' total loads (Staff Ex. 10 at 5). However, based on the size of the additional load assumed by the Companies, Staff only recommended that the incremental power purchases equal, on average, 5 percent of each company's load in 2009, 7.5 percent in 2010, and 10 percent in 2011 (Id.).

The Companies responded to Staff's reduction in the amount of market purchases by adding that the Companies also intended to utilize their proposed levels of market purchases to encourage economic development (Cos. Ex. 2-E at 7).

Various parties oppose the inclusion of incremental "slice of the system" power purchases in AEP-Ohio's ESP. OEG witness Kollen testified that the Commission should reject this provision of AEP-Ohio's ESP because the Companies have not demonstrated a need for the excess generation purchased on the market to meet its existing load, and such "purchases are not prudent because they will uneconomically displace lower cost Company owned generation and cost-based purchased power that is available to meet their loads" (OEG Ex. 3 at 3, 9-10). IEU witness Bowser agrees that this portion of the ESP should be rejected (IEU Ex. 10 at 9). Kroger witness Higgins also concurs, stating: "The only apparent purpose of these slice-of-system purchases is to serve as a device for increasing prices charged to customers" (Kroger Ex. 1 at 9). OCEA concurs with the testimony offered by these intervenor witnesses (OCEA Br. at 53-55). Intervenors also question this provision in light of the AEP Interconnection Agreement (OEG Ex. 3 at 10-14; OCEA Br. at 54-55).

Given that AEP-Ohio has explicitly stated that the purchased power is not a prerequisite for adequately serving the additional load requirements assumed by AEP-Ohio when adding Ormet and the MonPower customers to its system (Cos. Ex. 2-E at 7), the Commission finds that Staff's rationale for the support of the proposal, as well as the recommendation for a reduction in the amount of purchased power proposed to equal the additional load, fails. We struggle, along with the other parties, to find a rational basis to approve such a proposal in the absence of need. The Commission notes that while we appreciate AEP-Ohio's willingness and cooperation with regard to the inclusion of Ormet and MonPower customers into its system, we believe that the Companies have been able to prepare and plan for the additions to its system under the current regulatory scheme and have been compensated during the transitional period. As for the reliance on the market purchases to promote economic development, the Commission believes that this goal can be more appropriately achieved through other means as outlined in this opinion and order, the Commission's recently adopted rules, and SB 221. Accordingly, we find that AEP-Ohio's ESP shall be modified to exclude this provision.

(b) <u>Off-System Sales (OSS)</u>

Kroger and OEG contend that FAC costs must be offset by a credit for OSS margins, stating that other jurisdictions governing other operating companies of AEP Corporation require such an OSS offset to revenue requirements (Kroger Br. at 11-12; Kroger Ex. 1 at 3, 9, 10; OEG Br. at 10; OEG Ex. 3 at 14-15, 16-17). Kroger argues that it is incongruent to allow a rate increase based on certain costs without examining AEP-Ohio's net costs to determine that AEP-Ohio's costs have actually increased (Kroger Br. at 11-12). OEG notes that the Companies' profits for 2007 from off-system sales were $146.7 million for OP and $124.1 million for CSP (OEG Ex. 3 at 14). OEG reasons that because the cost of the power plants used to generate off-system sales are included in rates, all revenue from the power plants should be a rate credit (OEG Br. 10). OCEA raises similar arguments to those of OEG and Kroger in its brief (OCEA Br. at 57-59). More specifically, OCEA argues that the Companies' proposal to eliminate off-system sales expenses from Ohio ratepayers is not equivalent to providing customers the benefit of off-system sales margins. OCEA notes that, in other cases, the Commission has required electric utilities to share the benefits of off-system sales revenue with jurisdictional customers (OCEA Br. at 58-59).

Staff did not take a position in regard to the intervenors' arguments to offset FAC costs by the OSS margin. Staff, however, concluded that the costs sought to be recovered through the FAC are appropriate (Staff Ex. 10 at 4; Staff Ex. 8 at 3; Staff Br. at 2).

The Companies argue that an OSS offset to FAC charges is not required by Section 4928.143(B)(2)(a), Revised Code, or any other provision in SB 221 (Cos. Ex. 2-E at 8-9; Cos. Reply Br. at 12). The Companies also state that the regulatory or statutory regimes in other states have no bearing on Ohio or Ohio's statutory requirements (Id.). As to the other arguments raised by OEG and OCEA, the Companies argue that the intervenors' arguments ignore the fact that the Companies' ESP reduces the FAC and environmental carrying cost expenses for AEP-Ohio customers based on the calculation of the pool capacity payments in the FAC and use of the pool allocation factor (Cos. Ex. 7, Exhibits PJN-1, PJN-2, PJN-6 and PJN-8).

Upon a review of the record in this case, the Commission is not persuaded by the intervenors' arguments. We do not believe that the testimony presented offered adequate justification for modifying the Companies' proposed ESP to offset OSS margins from the FAC costs. Section 4928.143(B)(2)(a), Revised Code, specifically provides for the automatic recovery, without limitation, of prudently incurred costs for fuel, purchased power, capacity cost, and power acquired from an affiliate. As recognized by the Companies, the pertinent statutory provisions do not require that there be an offset to the allowable fuel costs for any OSS margins. Additionally, Ohio law governs the Companies' ESP application, and thus, we are not persuaded by the arguments of Kroger regarding how other jurisdictions handle OSS margins. Moreover, consistent with our discussion in Section VII of our opinion and order, we do not believe that OSS should be a component of the Companies' ESP, or factored into our decision in this proceeding. Intervenors cannot have it both ways: they cannot request that OSS margins be credited against the fuel costs (i.e., offset the expenses); and, at the same time, ask us to count the OSS margins as earnings for purposes of the significantly excessive earnings test (SEET) calculation.

(c) Alternate Energy Portfolio Standards (including Renewable Energy Credit program)

Section 4928.64, Revised Code, establishes alternative energy portfolio standards which consist of requirements for both renewable energy and advanced energy resources. Section 4928.64(B)(2), Revised Code, introduces specific annual benchmarks for renewable energy resources and solar energy resources beginning in 2009.

The Companies' ESP application included, as a part of the FAC costs, cost recovery for renewable energy purchases and renewable energy credits (RECs) with purchased power reflected in Account 555 and RECs reflected in Account 557 (Cos. Ex. 7 at 6-7, 14). The Companies stated that they plan to purchase almost all of the RECs required for 2009. The Companies further state that they will enter into renewable energy purchase agreements (REPAs) to meet compliance requirements for the remainder of the ESP period, for which they have already conducted a request for proposal (Cos. Ex. 9 at 10-11). The Companies also recognized that recovery of such costs to comply with Section 4928.64(E), Revised Code, is, as stated in the statute,avoidable. Therefore, the Companies explained that they intend to include all of the renewable energy costs within the FAC mechanism and not as part of any FAC deferral. The Companies, however, recognized that their request for proposal and procurement practices for renewable energy will be subject to a prudency review and the renewable purchases subject to a financial audit (Cos. Br. at 96-98).

Staff and OPAE/APAC express concern with the Companies' plan to include renewable energy purchases and RECs as a component of the FAC mechanism (Staff Ex. 4 at 6-7; Staff Br. at 4-5; OPAE/APAC Br. at 11).

The Commission notes that the renewable energy purchases and RECs requirements are based on Section 4928.64(E), Revised Code, and any recovery of such costs is, as the statute provides, bypassable. With the Companies' recognition that such costs must be accounted for separately from fuel costs, and is not to be deferred, the Commission finds that Staff's and OPAE/APAC's issue is adequately addressed. Accordingly, with that clarification, the Commission finds that this aspect of the Companies' ESP application is reasonable and should be adopted.

2. FAC Baseline

The Companies proposed establishing a baseline FAC rate by identifying the FAC components of the current SSO. The Companies started with the EFC rates that were unbundled as part of the electric transition plan (ETP) proceedings (those in effect as of October 5, 1999) (step #1), and then added calendar year 1999 amounts for the additional fuel, purchased power, and environmental accounts that are included in the requested

FAC mechanism for this proceeding (1999 data from FERC Form 1 and other financial records were used as the base period for the additional components that were not in the frozen EFC rates) (step #2) (Cos. Ex. 7 at 8). The Companies then adjusted the 1999 frozen EFC rates (step #1) and the 1999-level rates developed for the additional components (step #2) for subsequent rate changes (step #3) to get the base FAC component that is equal to the fuel-related costs presently embedded in the Companies' most recent SSO (i.e., the RSP) (Id.). The subsequent rate changes that occurred during the RSP period and reflected in step #3 of the Companies' calculation included annual increases of 7 percent for OP and 3 percent for CSP, an increase in CSP's generation rates for 2007 by approximately 4.43 percent through the Power Acquisition Rider, and a reduction in OP's base period FAC rate by the amount of the Gavin Cap and mine investment shutdown cost recovery component that was in OP's 1999 EFC rate given that the Regulatory Asset Charge (RAC) established in the ETP case expired (Id. at 9).

Staff argued that the actual costs should be used in determining the FAC baseline and, therefore, recommended using 2007 actual data, escalated by 3 percent for CSP and 7 percent for OP, as a reasonable proxy for 2008 (Staff Ex. 10 at 3-4). Staff explained that utilizing actual 2007 costs and updating them to 2008 is appropriate given that the resulting amounts should be the costs that the Companies are currently recovering for fuel-related costs (Id.). Additionally, Staff notes that this proposal produces a result that is very close to the result produced by utilizing the Companies' methodology (Staff Br. at 3).

OCC recommended the use of 2008 actual fuel costs to establish the FAC baseline, which will be reconciled to actual costs in the future FAC proceeding (OCC Ex. 10 at 11-14). OCC's witness testified that her concern is that if the FAC baseline is established too low, the base portion of the generation rates (the non-FAC portion) will be established too high (OCC Ex. 10 at 13). In its Brief, OPAE/APAC opposed the Companies' use of 1999 rates as the baseline and seems to support OCC's recommendation to use 2008 fuel costs (OPAE/APAC Br. at 11-12). The Companies' responded by explaining that they did not use 1999 rates as the baseline, rather the 1999 level was just the starting point to calculating the baseline (Cos. Reply Br. at 21). The Companies also stated that a variable baseline was not appropriate as it would result in a variable non-FAC generation rate as well since the non-FAC component of the current generation SSO was determined to be the residual after subtracting out the FAC component (Id.).

As noted by OCC's witness, the 2008 actual fuel costs were not known at the time of the hearing (OCC Ex. 10 at 14). Thus, the Companies and Staff proposed methodologies to obtain a proxy for 2008 fuel costs. While both had a different starting point to the calculation of the 2008 proxy, we agree that in the absence of known actual costs, a proxy is appropriate to establish a baseline. Therefore, based on the evidence presented, we agree with Staff's resulting value as the appropriate FAC baseline.

3. FAC Deferrals

The Companies proposed to mitigate the rate impact on customers of any FAC increases by phasing in their new ESP rates by deferring a portion of the annual incremental FAC costs during the ESP (Cos. App. at 4-5; Cos. Ex. 3 at 11; Cos. Ex. 1 at 13-15). The amount of the incremental FAC expense that would be recovered from customers would be limited so that total bill increases would not be more than 15 percent for each of the three years of the ESP (Id.). The 15 percent target for FAC does not include cost increases associated with the transmission cost recovery rider (TCRR) or with any new government mandates (the Companies' could apply to the Commission for recovery of costs incurred in conjunction with compliance of new government mandates, including any Commission rules imposed after the filing of the AEP-Ohio application (Cos. App. at 6)). The Companies proposed to periodically reconcile the FAC to actual costs, subject to the maximum phase-in rates (Cos. Ex. 1 at 14-15). Under the Companies' proposal, any incremental FAC expense that exceeds the maximum rate levels will be deferred. The Companies project the deferrals under the proposed ESP to be $146 million by December 31, 2011 for CSP and $554 million by December 31, 2011 for OP (Cos. Ex. 6, Exhibit LVA-1). If the projected FAC expense in a given period is less than the maximum phase-in FAC rates, the Companies proposed to give the Commission the option of charging the customer the actual FAC expense amount or increasing the FAC rates up to the maximum levels in order to reduce any existing deferred FAC expense balance (Id.). Any deferred FAC expense remaining at the end of 2011 would be recovered, with a carrying cost at the Weighted Average Cost of Capital (WACC), as an unavoidable surcharge from 2012 to 2018 (Id.).

As noted previously, Staff, OCC, and Sierra support the FAC mechanism that will be updated and reconciled quarterly (Staff. Ex. 8 at 3-4; OCC Ex. at 11 at 4-5, 31-40; OCEA Br. at 47-48, 67-68). Staff, OCC, and Sierra, however, oppose the creation of any long-term deferrals for fuel costs (Staff Ex. 10 at 5; OCEA Br. at 62). Similarly, the Commercial Group recommended that "customers pay the full cost of fuel during the ESP" (Commercial Group Ex. 1 at 9). Constellation argued that the deferral proposal should be rejected because it masks the true cost of the ESP generation, deferrals have the effect of artificially suppressing conservation, the carrying costs proposed by the Companies would be set at the Companies' cost of capital, which would include equity, and customers do not want to pay interest on any deferred amounts (instead, customers would rather pay when the costs are incurred so as to not pay the interest) (Constellation Br. at 8-9). The Schools also questioned the need for the phase-in of rates, as well as the avoidability of the surcharge that would be created to collect the deferred fuel costs, with carrying charges, from 2012 to 2018 (Schools Br. at 3).

If the Commission, however, authorizes such deferrals to levelize rates during the ESP period, Staff, OCC, and Sierra believe that the deferrals should be short-term deferrals that do not extend beyond the ESP period (Staff Ex. 10 at 5; OCEA Br. at 62). IEU also supports the use of a phase-in to stabilize rates, but does not believe that Section 4928.144, Revised Code, allows the deferrals to extend beyond the ESP term (IEU Br. at 27-29).

Furthermore, OCC opposed the Companies' use of WACC, stating that such an approach is not reasonable and results in excessive payments by customers (OCC Ex. 10 at 34). Through testimony, OCC asserts that the carrying charges on deferrals should be based on the current long-term cost of debt (OCC Ex. 10 at 34-35; Tr. Vol. VI at 157-158). However, in its joint brief, OCC seems to have modified its position and is now arguing that the carrying charges should be calculated to reflect the short-term actual cost of debt, excluding equity (OCEA Br. at 62). In reliance on OCC's testimony, Constellation submits that it is appropriate to use the long-term cost of debt (Constellation Br. at 8). The Commercial Group also opposed the use of WACC; instead, Commercial Group witness Gorman recommended that the Companies finance the FAC phase-in deferrals entirely with short-term debt given that the accruals are a temporary investment and not long-term capital (Commercial Group Ex. 1 at 9-11).

Additionally, the Commercial Group and OCC argued that the deferred fuel expenses should be calculated to reflect the net of applicable deferred income taxes (Commercial Group Ex. 1 at 9-10; OCEA Br. at 63). Commercial Group witness Gorman testified that if a company does not recover the fuel expense in the year that it was incurred, the company will reduce its current tax expense and record a deferred tax obligation. The deferred tax obligation would then represent a temporary recovery of the fuel expense via a reduction to the current income tax expense (Commercial Group Ex. 1 at 10). Commercial Group witness Gorman then goes on to recognize that the income tax will ultimately have to be paid after the incremental fuel cost is recovered from customers, but states that, while deferred, the company will partially recover its deferred fuel balance through the reduced income tax expense (Id.). To bolster their argument that deferred fuel expenses should be calculated on a net-of-tax basis, OCC and Sierra relied, in their brief, on a witness' testimony in an unrelated proceeding, which has been subsequently withdrawn as explained above. Neither OCC nor Sierra offered any record evidence to support its position.

AEP-Ohio, on the other hand, argued that the calculation of carrying charges for the deferrals should not be done on a net-of-tax basis. AEP-Ohio witness Assante testified that limiting the application of the carrying cost rate to a net-of-tax balance of FAC deferrals improperly utilizes a traditional cost-of-service ratemaking approach in a generation pricing proceeding (Tr. Vol. IV at 158-160). Additionally, while the Companies proposed the phase-in proposal to help mitigate increases and believe that their proposal is reasonable, in light of the opposition received from several parties, the Companies stated that they would accept a modification to their ESP that eliminated such deferrals (Cos. Reply Br. at 41-42).

To ensure rate or price stability for consumers, Section 4928.144, Revised Code, authorizes the Commission to order any just and reasonable phase-in of any electric utility rate or price established pursuant to 4928.143, Revised Code, with carrying charges, through the creation of regulatory assets. Section 4928.144, Revised Code, also mandates that any deferrals associated with the phase-in authorized by the Commission shall be collected through an unavoidable surcharge. Section 4928.144, Revised Code, does not, however, limit the time period of the phase-in or the recovery of the deferrals created by the phase-in through the unavoidable surcharge.

Contrary to OCC and others,[7] we believe that a phase-in of the increases is necessary to ensure rate or price stability and to mitigate the impact on customers during this difficult economic period, even with the modifications to the ESP that we have made herein. To this end, the Commission appreciates the Companies' recognition that over 15 percent rate increases on customers' bills would cause a severe hardship on customers. Nonetheless, given the current economic climate, we believe that the 15 percent cap proposed by the Companies is too high.[8] Therefore, we exercise our authority pursuant to Section 4928.144, Revised Code, and find that the Companies should phase-in any authorized increases so as not to exceed, on a total bill basis, an increase of 7percent for CSP and 8percent for OP for 2009, an increase of 6percent for CSP and 7percent for OP for 2010, and an increase of 6percent for CSP and 8percent for OP for 2011 are more appropriate levels.

Based on the application, as modified herein, the resulting increases amount to approximate overall average generation rates of 5.47 cents/kWh and 4.29 cents/kWh for CSP and OP, respectively in 2009; 6.07 cents/kWh and 4.75 cents/kWh for CSP and OP, respectively, in 2010; and 6.31 cents/kWh and 5.31 cents/kWh for CSP and OP, respectively, in 2011.

Any amount over the allowable total bill increase percentage levels will be deferred pursuant to Section 4928.144, Revised Code, with carrying costs. If the FAC expense in a given period is less than the maximum phase-in FAC rate established herein, the Companies shall begin amortization of the prior deferred FAC balance and increase the FAC rates up to the maximum levels allowed to reduce any existing deferred FAC expense balance, including carrying costs. As required by Section 4928.144, Revised Code, any deferred FAC expense balance remaining at the end of 2011 shall be recovered

7 See, e.g., OCC Reply Br. at 45-46; Constellation Br. at 6-9.

8 Numerous letters filed in the docket by various customers confirm our belief.

via an unavoidable surcharge. We believe that this approach balances our objectives of limiting the total bill increases that customers will be charged in any one year with minimizing the deferrals and carrying charges collected from customers.

Based on the record in this proceeding, we do not find the intervenors' arguments concerning the calculation of the carrying charges persuasive. Instead, for purposes of a phase-in approach in which the Companies are expected to carry the fuel expenses incurred for electric service already provided to the customers,[9] we find that the Companies have met their burden of demonstrating that the carrying cost rate calculated based on the WACC is reasonable as proposed by the Companies. As explained previously, Section 4928.144, Revised Code, provides the Commission with discretion regarding the creation and duration of the phase-in of a rate or price established pursuant to Sections 4928.141 through 4928.143, Revised Code. The Commission is not convinced by arguments that limit the collection of the deferrals to the term of the ESP. Limiting the phase-in to the term of the ESP may not ensure rate or price stability for consumers within that three-year period and may create excessive increases, which may defeat the purpose for establishing a phase-in. The limitation of any deferrals to the ESP term may also negate the cap established by the Commission herein to provide stability to consumers. Therefore, we find that the collection of any deferrals, with carrying costs, created by the phase-in that are remaining at the end of the ESP term shall occur from 2012 to 2018 as necessary to recover the actual fuel expenses incurred plus carrying costs.

Regarding OCC's, Sierra's, and the Commercial Group's recommendations that the tax deductibility of the debt rate be reflected in the carrying charges on a net-of-tax basis,[10] we have recently explained that this recommendation accounts for the deductibility of the debt rate, but does not account for the fact that the revenues collected are taxable.[11] If we were to adopt the net-of-tax recommendation, the Companies would not recover the full carrying charges on the authorized deferrals. We believe that this outcome would be inconsistent with the explicit directive of Section 4928.144, Revised

9 We agree with the Companies that this decision is consistent with our decision in the recent TCRR and accounting cases with regard to the calculation based on the long-term cost of debt. See *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008) and *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 08-1301-EL-UNC, Finding and Order (December 19, 2008). However, we believe that, with regard to the equity component, these cases are distinguishable from the current ESP proceeding, where we are establishing the standard service offer and requiring the Companies to defer the collection of incurred generation costs associated with fuel over a longer period. We also believe that this decision is reasonable in light of our reduction to the Companies' proposed FAC deferral cap, which may have the effect of requiring the Companies to defer a higher percentage of FAC costs than what was otherwise proposed.

10 OCEA Br. at 63-64; Commercial Group Ex. 1 at 9-10.

11 *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., Toledo Edison Co.*, Case No. 07-551-EI-AIR, et al., Opinion and Order at 10 (January 21, 2009).

Code: "If the commission's order includes such a phase-in, the order also shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount." Therefore, we find that the carrying charges on the FAC deferrals should be calculated on a gross-of-tax rather than a net-of-tax basis in order to ensure that the Companies recover their actual fuel expenses. Accordingly, we modify the deferral provision of the Companies' ESP to lower the overall amount that may be charged to customers in any one year.

B. Incremental Carrying Cost for 2001-2008 Environmental Investment and the Carrying Cost Rate

A component of the non-FAC generation increase is the incremental, ongoing carrying costs associated with environmental investments made during 2001-2008. The Companies propose to include, as a part of their ESP, costs directly related to energy produced or purchased. While the Companies are not proposing to include the recovery of capital carrying costs on environmental capital investments in the FAC, the Companies are requesting recovery of carrying charges for the incremental amount of the environmental investments made at their generating facilities from 2001 to 2008. The Companies' annual capital carrying costs for the incremental 2001-2008 environmental investments not currently reflected in rates equals $84 million for OP and $26 million for CSP. The Companies' ESP includes capital carrying costs for 2001 through 2008 net of cumulative environmental capital expenditures for each company multiplied by the carrying cost rate.

Each company's capital expenditures in the ESP are determined by the expenditures made since the start of the market development period as offset by the estimate included in the Companies' rate stabilization plan (RSP) case, Case No. 04-169-EL-UNC, and the environmental expenditures included in the Companies' adjustments received in the RSP 4 Percent Cases[12] (Cos. Ex. 7 at 15-17, Exhibits PJN-8, PJN-12). The Companies calculated the carrying cost rate based on levelized investment and depreciation over the 25-year life of the environmental investment. CSP and OP utilized a capital structure of 50 percent common equity and 50 percent debt to calculate the carrying charges, asserting that such is consistent with the capital structure as of March 31, 2008, and consistent with the expected capital structure during the ESP period. Short-term debt and the Gavin Lease were excluded from OP's capital structure. AEP-Ohio asserts that such was the process in the RSP 4 Percent Cases. AEP-Ohio also argues that, for ratemaking purposes, the Gavin Lease is considered an operating lease as opposed to a component of rate base. Further, the Companies reason that the WACC incorporated a 10.5 percent ROE as used by the Commission in the proceeding to transfer

12 *In re Columbus Southern Power Company and Ohio Power Company*, Case Nos. 07-1132-EL-UNC, 07-1191-EL-UNC, and 07-1278-EL-UNC (RSP 4 Percent Cases).

MonPower's certified territory to CSP (MonPower Transfer Case)[13] (Cos. Ex. 7 at 16-17, 19, Exhibit PJN-8, Exhibits PJN-10 - PJN-13; Cos. Ex. 7-B at 7).

Staff testified that the Companies should be allowed to recover carrying costs associated with capitalized investments to comply with environmental requirements made between 2001-2008 that are not currently reflected in rates (Staff Ex. 6 at 2, 4-5). Staff confirmed that AEP-Ohio's estimated revenue increases for incremental carrying costs associated with additional environmental investments in the amounts of $26 million for CSP and $84 million for OP are not currently reflected in rates (Id.).

OCEA and OEG oppose the Companies' request for recovery of environmental carrying charges on investments made prior to January 1, 2009. OEG contends that the rates in the RSP Case included recovery for environmental capital improvements made through December 31, 2008, as reflected in the RSP 4 Percent Cases. Further, OCEA and OEG argue that SB 221 only permits the recovery of carrying costs associated with environmental expenditures that are prudently incurred and that occur on or after January 1, 2009, pursuant to Section 4928.143(B)(2)(b), Revised Code (OCEA Ex. 10 at 32; OEG Ex. 3 at 21). Thus, OCEA reasons that approval of such expenditures necessitates an after-the-fact review, which cannot be considered in this proceeding. OEG, however, is not opposed to the Companies' increases due to environmental capital additions made after January 1, 2009, in the ESP in accordance with Section 4928.143(B)(2)(b), Revised Code (OEG Ex. 3 at 20). OEG and Kroger argue that the Companies' assertion that existing rates do not reflect environmental carrying costs ignores the Companies' non-environmental investment and the effects of accumulated depreciation and, therefore, according to OEG and Kroger, fails to demonstrate any net under-recovery of generation costs in total by the Companies (OEG Ex. 3 at 21; Kroger Ex. 1 at 10-11). OCEA and APAC/OPAE agree that the Companies have failed to demonstrate that they lack the earnings to make the environmental investments (OCEA Ex. 10 at 32; APAC/OPAE Br. at 5-6).

Further, OCEA asserts that there are several reasons that the Companies' attempt to recover environmental carrying cost during the ESP is unlawful. OCEA contends that it is retroactive ratemaking[14] and Senate Bill 3, which was the governing law from 2001 to 2005, included rate caps pursuant to Section 4928.34(A)(6), Revised Code, and the RSP, applicable to 2006 through 2008, included limitations on the rate increases. Therefore, the Companies can not collect now for costs incurred during those periods. Further, OCEA

---

13 *In the Matter of the Transfer of Monongahela Power Company's Certified Territory in Ohio to the Columbus Southern Power Company*, Case No. 05-765-EL-UNC.

14 *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.* (1957), 166 Ohio St. 25.

states that allowing for recovery of such environmental carrying costs would also violate the Stipulation and the Commission's order in the ETP case.[15]

OCEA argues that, should the Commission allow AEP-Ohio to recover carrying costs on environmental investments, the Companies' carrying charges should be based on actual investments made, not actual and forecasted environmental expenditures, and the carrying costs should be adjusted. More specifically, OCEA recommends that because the Companies failed to provide any support or explanation of the calculation of the property taxes or general and administrative components of the carrying cost calculation, the Commission should not grant recovery of these aspects of the Companies' request. Additionally, OCEA and IEU argue that the proposed carrying cost rates do not reflect actual financing for environmental investments, which could impact the calculation of the carrying cost rates (IEU Br. at 21-22, citing IEU Ex. 7 at 132-133; Tr. Vol. XI at 111-113; OCEA Br. at 71-72). The carrying cost rates, according to IEU and OCEA, should be revised to reflect actual financing, including the use of pollution control bonds that have been secured by the Companies (Id.). To support their argument, IEU and OCEA rely on Staff witness Cahaan who testified at the hearing that "if specific financing mechanisms can be identified that would be appropriate and applicable to the assets being financed, I see no reason why those shouldn't be specifically used"[16] (IEU Br. at 21-22; OCEA Br. at 72-73). However, Staff witness Cahaan also stated that "[A]t the time when we looked at the carrying cost calculations it seemed reasonable, given the cost of debt and cost of equity of the company,"[17] which is consistent with his prefiled testimony that said: "I have examined the carrying costs rates provided to Mr. Soliman and found them to be reasonable" (Staff Ex. 10 at 7).

OCEA also recommends that the carrying costs for deferrals of environmental costs be revised to reflect actual short-term cost of debt, as opposed to WACC as proposed by the Companies, and that the calculated carrying charges should not be based on the original cost of the environmental investment but at cost minus depreciation. Thus, OCEA argues that the Companies are seeking a return on and a return of their investment as would be the case under traditional ratemaking, but overstating the depreciation component. OCEA also advocates that the carrying cost rates, 13.98 percent for OP and 14.94 percent for CSP, are too high in light of the economic environment at this time (OCEA Br. at 73-74). Finally, OCEA urges the Commission to offset the Companies' request for carrying charges by the Section 199 provision of the Internal Revenue Code (Section 199). Section 199 allows the Companies to take a tax deduction for "qualified production activities income" equal to 6 percent in 2009 and 9 percent in 2010 and

---

15 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Opinion and Order (September 28, 2000).

16 Tr. Vol. XII at 237.

17 Id.

thereafter. IEU, OEG, and OCEA request that the Commission adjust the carrying costs for the Section 199 deduction as the Commission has found appropriate in the Companies' 07-63 Case[18] and in the FirstEnergy ESP Case. OCEA argues that while Section 4928.143(B)(2)(a), Revised Code, allows the Companies to automatically recover the cost of federally mandated carbon or energy taxes, which will be passed on to customers, customers should be afforded the benefits of the Section 199 tax deduction (OCEA Br. at 74-75; IEU Br. at 21; IEU Ex. 10 at 6; OEG Ex. 3 at 23).

The Companies emphasize that their request for carrying costs is for the incremental carrying charges on the 2001-2008 investments that the Companies will incur post-January 1, 2009. AEP-Ohio explained that the carrying costs themselves are the costs that the Companies will incur after January 1, 2009, and, therefore, the Companies reason that the "without limitation" language in Section 4928.143(B)(2), Revised Code, supports their request (Tr. Vol. XIV at 93, 114). AEP-Ohio stresses that Section 4928.143(B)(2), Revised Code, is the basis for the carrying cost request as opposed to paragraph (B)(2)(a) of Section 4928.143, Revised Code, as OCEA and OEG claim and, therefore, the arguments as to retroactive ratemaking are misplaced (Cos. Reply Br. at 29-30). Further, the Companies insist that Section 4928.143(B)(2)(b), Revised Code, supports their request, as the carrying charges are necessary to recover the ongoing cost of investments in environmental facilities and equipment that are essential to keep the generation units operating. The Companies assert that the operating costs of their generation units remain well below the cost of securing the power on the market (Cos. Ex. 7-B at 7).

As to the claims that the carrying costs are overstated, the Companies claim that the levelized depreciation approach used by the Companies is better for customers than traditional ratemaking given the relative newness of the environmental investments (Tr. Vol. V at 55-56; Tr. Vol. VII at 22-23). The Companies also argue that the Companies' investments in environmental compliance equipment during 2001-2008 were not factored into the rates unbundled in 2000 and capped under the ETP case as alleged. The rate increase approved, as part of the RSP, and the RSP 4 Percent Cases did not, according to the Companies, provide recovery of the carrying costs to be incurred during the ESP period (Cos. Ex. 7, Exhibits PJN-8 - PJN-9 and PJN-12). The Companies reply that the intervenors' request to adjust carrying charges for the Section 199 deduction is flawed. AEP-Ohio states that the Section 199 deduction is not a reduction to the statutory tax rate used in the WACC, a fact which AEP-Ohio asserts has been recognized by FERC and the Financial Accounting Standards Board. The Companies further note that IEU witness Bowser indeed confirmed that Section 199 does not reduce the statutory tax rate (Tr. Vol. XI at 271-273). The Companies also argue, and IEU witness Bowser agreed, that the Section 199 tax deduction is applicable to AEP Corporation as a whole and not to each operating subsidiary. The Companies note, therefore, that any deduction available to

18 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 07-63-EL-UNC, Opinion and Order (October 3, 2007) (07-63 Case).

AEP-Ohio is reduced if one of the other AEP Corporation operating affiliates is not eligible for the Section 199 deduction (Cos. Br. 36; Tr. Vol. XI at 266-267). Accordingly, the Companies state that AEP-Ohio has not been able to take the full deduction (Tr. Vol. XIV at 115-117). Further, the Companies argue that the intervenors have misinterpreted the Commission's decision in the FirstEnergy ESP Case to imply that the Commission made an adjustment to account for the Section 199 deduction. For these reasons, the Companies request that the Commission reconsider adjusting carrying charges for the potential Section 199 deduction.

Upon review of the record, we agree with Staff that AEP-Ohio should be allowed to recover the incremental capital carrying costs that will be incurred after January 1, 2009, on past environmental investments (2001-2008) that are not presently reflected in the Companies' existing rates, as contemplated in AEP-Ohio's RSP Case. Further, the Commission finds that this decision regarding the recovery of continuing carrying costs on environmental investments, based on the WACC, is consistent with our decision in the 07-63 Case and the RSP 4 Percent Cases. Additionally, we agree with Staff that the levelized carrying cost rates proposed by AEP-Ohio are reasonable and, therefore, should be approved. We further find, as we concluded in the FirstEnergy ESP Case, that adequate modifications to the Companies' ESP application have been made in this order to account for the possibility of any applicable Section 199 tax deductions.

C. Annual Non-FAC Increases

The Companies proposed to increase the non-FAC portion of their generation rates by 3 percent for CSP and 7 percent for OP for each year of the ESP to provide a recovery mechanism for increasing costs related to matters such as carrying costs associated with new environmental investments made during the ESP period, increases in the general costs of providing generation service, and unanticipated, non-mandated generation-related cost increases. Specifically, as part of this automatic increase, the Companies intend to recover the carrying costs associated with anticipated environmental investments that will be necessary during the ESP period (2009-2011) (Cos. Br. at 27; Cos. Reply Br. at 46-49). The Companies argued that the annual increases are not cost-based and are avoidable for those customers who shop. The Companies also proposed two exceptions to the fixed, annual increases, one for generation plant closures and the other for OP's lease associated with the scrubber at the Gavin Plant, which would require additional Commission approval during the ESP. After establishing the FAC component of the current generation SSO to get a FAC baseline, the Companies determined that the remainder of the current generation SSO would be the non-FAC base component.

The intervenors oppose automatic annual increases in the non-FAC component of the generation rate, and argue that any generation increases should be cost-based (IEU Br.

at 24; OPAE/APAC Br. at 6; OEG Br. at 12; OCEA Br. 29-31). OEG contends that since the Companies have not provided any support for the automatic annual increases, which could result in total rate increases over the three-year period of $87 million for CSP and $262 million for OP, the annual increases should be disallowed (OEG Ex. 3 at 18-19); Similarly, Kroger argues that AEP-Ohio did not appropriately account for costs associated with the non-FAC component of the proposed generation rates (Kroger Br. at 14).

Staff opposes CSP's and OP's recommended annual, non-FAC increases of 3 and 7 percent, respectively (Staff Ex. 10 at 4). Instead, Staff stated that it believes a more appropriate escalation of the non-FAC generation component would be half of the proposed amounts; therefore, recommending annual increases of 1.5 percent for CSP and 3.5 percent for OP (Id.). Staff witness Cahaan rationalized the proposed reduction by stating that "an average of 5% for the two companies may have been a reasonable expectation of cost increases at the time that the ESP was contemplated, but not now. With the recent financial crises, we are entering a recessionary, and possibly a deflationary, period and any expectations of price increases need to be revised downward" (Id.). Furthermore, while recognizing that the ultimate balancing of interests lies with the Commission, Staff witness Cahaan testified that Staff's recommended reduction in the proposed increases was a reasonable balance between the Companies' obligation and costs to serve customers and the current economic conditions (Tr. Vol. XII at 211). The Companies rejected Staff's rationalization for the reduction in their proposed non-FAC increases (Cos. Reply Br. at 49). IEU also rejected Staff's rationalization for the reduction, arguing that no automatic increases are warranted (IEU Br. at 24).

Stating that it is in the public interest for the Companies to continue investing in environmental equipment and to be in compliance with current and future environmental requirements, Staff witness Soliman also recommended that AEP-Ohio be permitted to recover carrying costs for anticipated environmental investments made during the ESP period (Staff Ex. 6 at 5). Staff recommended that this recovery occur through a future proceeding upon the request of the Companies for recovery of additional carrying costs associated with actual environmental investment after the investments have been made (Staff Br. at 6-7). Specifically, Staff suggested that the Commission require the Companies to file an application in 2010 for recovery of 2009 actual environmental investment cost and annually thereafter for each succeeding year to reflect actual expenditures (Tr. Vol. XII at 132; Staff Ex. 10 at 7). OCEA seems to agree with Staff's recommendation (OCEA Br. at 71).

The Companies further respond that Section 4928.143, Revised Code, does not require that the SSO price be cost-based and, instead, Section 4928.143(B)(2)(e), Revised Code, authorizes electric utilities to include in their ESP provisions for automatic increases in any component of the SSO price (Cos. Reply Br. at 48-49).

The Commission finds Staff's approach with regard to the recovery of the carrying costs for anticipated environmental investments made during the ESP to be reasonable, and, therefore, we direct the Companies to request, through an annual filing, recovery of additional carrying costs after the investments have been made.

We also agree with Staff that the economic conditions must be balanced against the Companies' provision of electric service under an ESP. In balancing these two interests, as well as considering all components of the ESP, we believe that it is appropriate to modify this provision of the Companies' ESP and remove the inclusion of any automatic non-FAC increases. As recognized by several intervenors, the record is void of sufficient support to rationalize automatic, annual generation increases that are not cost-based, but that are significant, equaling approximately $87 million for CSP and $262 million for OP (see, i.e., OCEA Br. at 29-30, citing Tr. Vol. XIV at 208-209). We also believe the modification is warranted in light of the fact that we have removed one of the Companies' significant costs factored into establishing the proposed automatic increases. Accordingly, we find that the ESP should be modified to eliminate any automatic increases in the non-FAC portion of the Companies' generation rates.

IV. DISTRIBUTION

A. Annual Distribution Increases

To support initiatives to improve the Companies' distribution system and service to customers, the Companies proposed the following two plans, which will result in annual distribution rate increases of 7 percent for CSP and 6.5 percent for OP:

1. Enhanced Service Reliability Plan (ESRP)

The Companies proposed to implement a new, three-year ESRP pursuant to 4928.143(B)(2)(h), Revised Code,[19] which includes an enhanced vegetation initiative, an enhanced underground cable initiative, a distribution automation initiative, and an enhanced overhead inspection and mitigation initiative (Cos. Ex. 11 at 3). While noting that they are providing adequate and reliable electric service, the Companies justify the need for the ESRP by stating that customers' service reliability expectations are increasing, and in order to maintain and enhance reliability, the ESRP is required (Id. at 3, 8, 10-14). AEP-Ohio further states that the three-year ESRP, consisting of the four reliability

---

19 On page 72 of its brief, the Companies rely on Section 4928.154(B)(2)(h), Revised Code, to support their request to receive cost recovery for the incremental costs of the incremental ESRP activities. We are assuming that the reference was a typographical error and that the Companies intended to cite to Section 4928.143(B)(2)(h), Revised Code (see Cos. Reply Br. at 50-51).

programs, is designed to modernize and improve the Companies' distribution infrastructure (Id.).

(a) Enhanced vegetation initiative

The Companies state that the purpose of this new initiative is to improve the customer's overall service experience by reducing and/or eliminating momentary interruptions and/or sustained outages caused by vegetation. The Companies proposed to accomplish this goal by balancing its performance-based approach to reflect a greater consideration of cycle-based factors (Id. at 26-28). The Companies state that under their proposed vegetation initiative, they will employ additional resources (approximately double the current number of tree crews in Ohio), employ greater emphasis on cycle-based planning and scheduling, increase the level of vegetation management work performed so that all distribution rights-of-way can be inspected and maintained, and utilize improved technologies to collect tree inventory data to optimize planning and scheduling by predicting problem areas before outages occur (Id. at 28-29).

(b) Enhanced underground cable initiative

The Companies state that the purpose of this initiative is to reduce momentary interruptions and sustained outages due to failures of aging underground cable. The Companies' plan to target underground cables manufactured prior to 1992 to replace and/or restore the integrity of the cable insulation (Id. at 31).

(c) Distribution automation (DA) initiative

The Companies explain that DA is a critical component of their proposed gridSMART distribution initiative that is described below. DA is an advanced technology that improves service reliability by minimizing, quickly identifying and isolating faulted distribution line sections, and remotely restoring service interruptions (Id. at 34-35).

(d) Enhanced overhead inspection and mitigation initiative

The Companies state that the purpose of this initiative is to improve the customer's overall service experience by reducing equipment-related momentary interruptions and sustained outages. The Companies intend to accomplish this goal through a comprehensive overhead inspection process that will proactively identify equipment that is prone to fail (Id. at 18). The Companies also state that the new program will go beyond the current inspection program required by the electric service and safety (ESSS) rules, which is a basic visual assessment of the general condition of the distribution facilities, by conducting a comprehensive inspection of the equipment on each structure via walking the circuit lines and physically climbing or using a bucket truck to inspect (Id. at 19). In conjunction with this program, AEP-Ohio proposes to focus on five targeted overhead asset initiatives, including cutout replacement, arrester replacement, recloser replacement, 34.5 kV protection, and fault indicator (Id. at 20-22).

Generally, numerous intervenors and Staff opposed the distribution initiatives and cost recovery of such initiatives through this proceeding. Many parties advocated for deferral of these distribution initiatives, and the ESRP as a whole, for consideration in a future distribution base rate case (Staff Br. at 7; Staff Ex. 1 at 6-7; OPAE/APAC at 19; IEU Br. at 25-26; Kroger Br. at 18; OHA Br. at 17; OMA Br. at 6). Further, OCEA argued that the Companies have not demonstrated that the ESRP is incremental to what the Companies are required to do and spend under the current ESSS rules and current distribution rates (OCEA Br. at 44; OCC Ex. 13 at 8-11). While supporting several aspects of the Companies' ESRP programs, Staff witness Roberts also questioned the incremental nature of the proposed ESRP programs (Staff Ex. 2 at 4-6, 13, 17, 18; Tr. Vol. VIII at 70-77).

The Commission agrees, in part, with Staff and the intervenors. The Commission recognizes that Section 4928.143(B)(2)(h), Revised Code, authorizes the Companies to include in its ESP provisions regarding single-issue ratemaking for distribution infrastructure and modernization incentives. However, while SB 221 may have allowed Companies to include such provisions in its ESP, the intent could not have been to provide a 'blank check' to electric utilities. In deciding whether to approve an ESP that contains provisions for distribution infrastructure and modernization incentives, Section 4928.143(B)(2)(h), Revised Code, specifically requires the Commission to examine the reliability of the electric utility's distribution system and ensure that customers' and the electric utilities' expectations are aligned, and to ensure that the electric utility is emphasizing and dedicating sufficient resources to the reliability of its distribution system. Given AEP-Ohio's proposed ESRP, the only way to examine the full distribution system, the reliability of such system, and customers' expectations, as well as whether the programs proposed by AEP-Ohio are "enhanced" initiatives (truly incremental), is through a distribution rate case where all components of distribution rates are subject to review. Therefore, at this time, the Commission denies the Companies' request to implement, as well as recover costs associated therewith, the enhanced underground cable initiative, the distribution automation initiative, and the enhanced overhead inspection and mitigation initiative. With regard to these issues, we concur with OHA: "The record in this case reflects the fact that the distribution prong of AEP's electric service deserves further Commission scrutiny – but not in the context of this accelerated ESP proceeding" (OHA Br. at 17).

Nonetheless, the Commission finds that AEP-Ohio has demonstrated in the record of this proceeding that it faces increased costs for vegetation management and that a specific need exists for the implementation of the enhanced vegetation initiative, as proposed as part of the three-year ESRP, to support an incremental level of reliability activities in order to maintain and improve service levels. The Companies' current approach to its vegetation management program is mostly reactive (Staff Ex. 2 at 10). While we recognize the difficulties that recent events have caused, we believe that it is important to have a balanced approach that not only reacts to certain incidents and problems, but that also proactively limits or reduces the impact of weather events or incidents. In addition to reacting to problems that occur, it is imperative that AEP-Ohio implements a cycle-based approach to maintain the overall system. To this end, the Companies have demonstrated in the record that increased spending earmarked for specific vegetation initiatives can reduce tree-caused outages, resulting in better reliability (Cos. Ex. 11 at 27-31). OCC witness Cleaver also recognized a problem with the current vegetation management program, and supported the adoption of a new, hybrid approach that incorporates a cycle-based tree-trimming program with a performance-based program (OCC Ex. 13 at 30, 35). Staff witness Roberts further supported the move to a new, four-year cycle-based approach and recommended that the enhanced vegetation initiative include the following: end-to-end circuit rights-of-way inspections and maintenance; mid-point circuit inspections to review vegetation clearance from conductors, equipment, and facilities; greater clearance of all overhang above three-phase primary lines and single-phase lines; removal of danger trees located outside of rights-of-ways where property owner's permission can be secured, and using technology to collect tree inventory data to optimize planning and scheduling (Staff Ex. 2 at 13).

The Commission is satisfied that the Companies have demonstrated in the record that the costs associated with the proposed vegetation initiative, included as part of the proposed three-year ESRP, are incremental to the current Distribution Vegetation Management Program and the costs embedded in distribution rates (Cos. Ex. 11 at 26-31). Specifically, the Companies proposed to employ additional resources in Ohio, place a greater emphasis on cycle-based planning and scheduling, and increase the level of vegetation management work performed (Id. at 28-29). Although OCC's witness questions the incremental nature of the costs proposed to be included in the enhanced vegetation initiative, OCC offered no evidence that the proposed initiative is already included in the current vegetation management program, and thus, is not incremental (OCC Ex. 13 at 30-36). Rather, OCC seems to quibble with the definition of "enhanced." OCC witness Cleaver stated: "I recommend that the Commission rule that the Company's proposed Vegetation Management Programs, while an improvement over its current performance based program, is *not an enhancement* but *rather a reflection of additional* tree trimming needed as a result of their prior program" (Id. at 35 (emphasis added)). Furthermore, we believe that the record clearly reflects customers' expectations as to tree-caused outages, service interruptions, and reliability of customers' service.[20] We also believe that, presently, those customer expectations are not aligned with the Companies' expectations. However, as required by Section 4928.143(B)(2)(h), Revised Code, we believe that the Companies' proposal for a new vegetation initiative more closely aligns

20 A common theme from the customers throughout the local public hearings was that outages due to vegetation have been problematic.

the customers' expectations with the Companies' expectations as it relates to tree-caused outages, importance of reliability, and the increasing frustration surrounding momentary outages with the emergence of new technology.

Accordingly, in balancing the customers' expectations and needs with the issues raised by several intervenors, the Commission finds that the enhanced vegetation initiative proposed by the Companies, with Staff's additional recommendations, is a reasonable program that will advance the state policy. To this end, the Commission approves the establishment of an ESRP rider as the appropriate mechanism pursuant to Section 4928.143(B)(2)(h), Revised Code, to recover such costs. The ESRP rider initially will include only the incremental costs associated with the Companies' proposed enhanced vegetation initiative (Cos. Ex. 11 at 31, Chart 7) as set forth herein. Consistent with prior decisions,[21] the Commission also believes that, pursuant to the sound policy goals of Section 4928.02, Revised Code, a distribution rider established pursuant to Section 4928.143(B)(2)(h), Revised Code, should be based upon the electric utility's prudently incurred costs. Therefore, the ESRP rider will be subject to Commission review and reconciliation on an annual basis.

As for the recovery of any costs associated with the Companies' remaining initiatives (i.e., enhanced underground cable initiative, distribution automation initiative, and enhanced overhead inspection and mitigation initiative), the ESRP rider will not include costs for any of these programs until such time as the Commission has reviewed the programs, and associated costs, in conjunction with the current distribution system in the context of a distribution rate case as explained above. If the Commission, in a subsequent proceeding, determines that the programs regarding the remaining initiatives should be implemented, and thus, the associated costs should be recovered, those costs may, at that time, be included in the ESRP rider for future recovery, subject to reconciliation as discussed above.

2. <u>GridSMART</u>

The Companies propose, as part of their ESP, to initiate Phase 1 of gridSMART, a three-year pilot, in northeast central Ohio. GridSMART will include three main components, AMI, DA, and Home Area Network (HAN). The AMI system features include smart meters, two-way communications networks, and the information technology systems to support system interaction. AEP-Ohio contends that AMI will use internal communications systems to convey real-time energy usage and load information to both the customer and the company. According to the Companies, AMI will provide the capability to monitor equipment and convey information about certain malfunctions and operating conditions. DA will provide real-time control and monitoring of select

21 *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., Toledo Edison Co.*, Case No. 08-935-EL-SSO, Opinion and Order at 41 (December 19, 2008).

electrical components with the distribution system, including capacitor banks, voltage regulators, reclosers, and automated line switches. HAN will be installed in the customer's home or business and will provide the customer with information to allow the customer to conserve energy. HAN includes providing residential and business customers who have central air conditioning with a programmable communicating thermostat (PCT) and a load control switch (LCS), which is installed ahead of a major electrical appliance and will turn the appliance on and off or cycle the appliance on and off. AEP-Ohio reasons that central air conditioners are typically the largest piece of electrical equipment in the home and will yield the most significant demand response benefit (Tr. Vol. III at 304). LCS will provide customers who have a direct load control or interruptible tariff the ability to receive commands from the meter and the option to respond and signal the appropriate action to the meter for confirmation. The Companies propose a phased-in implementation of Phase 1 gridSMART to approximately 110,000 meters and 70 distribution circuits in an approximately 100 square mile area within CSP's service territory (Cos. Ex. 4 at 9, 12-13; Tr. Vol. III at 303-304). The Companies further propose to extend the installation of DA to 20 circuits in areas beyond the gridSMART Phase 1 program. The Companies propose a phased-in approach to fully implement gridSMART throughout their service area over the next 7 to 10 years, if granted appropriate regulatory treatment. The Companies estimate the net cost of gridSMART Phase 1 to be approximately $109 million (including the projected net savings of $2.7 million) over the three-year period (Cos. Ex. 4 at 15-16, KLS-1). The rate design for gridSMART includes the projected cost of the program over the life of the equipment. The Companies have requested recovery during the ESP of only the costs to be incurred during the three-year term of the ESP (Cos. Ex. 1 at DMR-4). Thus, AEP-Ohio asserts that it is inappropriate to consider the long-term operational cost savings when the long-term costs of gridSMART have not been included in the ESP for recovery.

Although Staff generally supports the Companies' implementation of gridSMART, particularly the AMI and DA components, Staff raises a few concerns with this aspect of the Companies' ESP application. Staff is concerned that the overhead costs for meter purchasing is overstated and recommends that the overhead costs be reviewed before approval to ensure that the costs are not duplicative of the overhead meter purchasing costs currently recovered in the Companies' rates (Staff Ex. 3 at 3). Staff argues that there is no reason for the Companies to restrict the PCTs to customers with air conditioning only, and recommends that the device be offered to any customer that desires to own this type of thermostat to control air conditioning or other electrical appliances (Staff Br. at 12). Staff and OCC also argue that customers who have invested in advanced technological equipment for gridSMART will not benefit from dynamic pricing and time differentiated rates if the Companies do not simultaneously file tariffs for such services (Staff Ex. 3 at 5; OCEA Br. at 82). Staff recommends that the Companies offer some form of a critical peak pricing rebate for residential customers, and some form of hedged price for commercial customers for a fixed amount of the customers' demand (Staff Ex. 3 at 5).

Further, Staff argues that the Companies' gridSMART proposal does not contain sufficient information regarding any risk-sharing between the ratepayers and shareholders, operational savings, or a cost/benefit analysis, and states that AEP-Ohio did not quantify any customer or societal benefits of the proposed gridSMART initiative (Staff Br. at 12-13). Staff notes that according to the Companies, DA will not be implemented until 2011, the third year of the ESP, and that the ESP proposes to install DA beyond the Phase I gridSMART area (Tr. Vol. III at 246). Staff opposes DA outside of the Phase I area because the Companies' cannot estimate the expected reliability improvements associated with the installation of DA. Staff also argues that DA costs should be recovered through a DA rider. The cost of gridSMART, per AEP-Ohio's proposal, is to be recovered by adjusting distribution rates. Staff is opposed to increasing distribution rates in this proceeding (Staff Ex. 5 at 6). Instead, Staff recommends that a rider be established and set at zero. The Staff argues that a rider has several benefits over the proposed increase to distribution rates, including separate accounting for gridSMART costs, an opportunity to approve and update the plan annually, assurance that expenditures are made before cost recovery occurs, and an opportunity to audit expenditures prior to recovery. Finally, Staff also advocates that the Companies share the financial risk of gridSMART between ratepayers and shareholders, as there is a benefit to the Companies. Additionally, Staff questions whether gridSMART will meet minimum reliability standards. Lastly, Staff asserts that AEP-Ohio should conduct a study that quantifies both customer and societal benefits of its gridSMART plan (Staff Br. at 14).

OCC, Sierra, and OPAE/APAC argue that the Companies' ESP fails to demonstrate that its gridSMART program is cost-effective as required by Sections 4928.02(D) and 4928.64(E), Revised Code, and state that AEP-Ohio's assumption that the societal and customer benefits are self-evident is misplaced (OCEA Br. at 77-80; OPAE/APAC Br. at 17-18). OCC, Sierra, and OPAE/APAC note that there are a number of factors about the program that the Companies have not determined or evaluated, which are essential to the Commission's consideration of the plan. OCC, Sierra, and OPAE/APAC state that the Companies have failed to include any full gridSMART implementation plan or costs, the anticipated life cycle of various components of gridSMART, a methodology for evaluating performance of gridSMART Phase I, an estimate of a customer's bill savings, or the positive impact to the environment or job creation (OCEA Br. at 79-80; OPAE\APAC Br. at 17-18). Further, OCC's witness states that the ESP fails to acknowledge that full system implementation is required before many of the benefits of gridSMART can actually be realized (OCC Ex. 12 at 6). OCC recommends that Phase I have its own set of performance measures, a more detailed project plan, including budget, resource allocation, and life cycle operating cost projections for the full 7-10 year implementation period of gridSMART and beyond, and performance measures for the Commission's approval (OCC Ex. 12 at 18).

AEP-Ohio regards the Staff's proposal to offer PCTs to any customer as overly generous, particularly given that Staff is recommending that the rider be set initially at zero (Cos. Br. at 68-69). AEP-Ohio also submits that it has committed to offering new service tariffs associated with Phase I of gridSMART once the technology is installed and the billing functionalities available (Cos. Ex. 1 at 6; Tr. Vol. III at 304-305; Cos. Br. at 68-69). Further, regarding Staff's policy of risk-sharing, the Companies contend that the assertion that the gridSMART investment benefits CSP just as much as it does customers is not true and, given that the operational savings do not equal or exceed the cost of the program, is without any basis presented in the record. Thus, AEP-Ohio argues that discounting the net cost to be recovered by CSP is unfair and inappropriate (Cos. Reply Br. at 63-64). The Companies are unclear how the Staff expects to determine whether gridSMART meets the minimum reliability standards and contend that this issue was first raised in the Staff's brief. Nonetheless, the Companies argue that imposing reliability standards as to gridSMART Phase 1 is inappropriate, primarily because strict accountability for achieving the expected reliability impacts does not take into account the many dynamic factors that impact service reliability index performance. Moreover, accurate measurement and verification of the discrete impact of gridSMART deployment on a particular reliability index would be difficult. The Companies also explain that the expected reliability impacts provided to the Staff were based on good faith estimates of the full implementation of gridSMART Phase 1 as proposed by the Companies. Thus, the Companies would prefer the establishment of deployment project milestones as opposed to specific reliability impact standards.

Although the Companies maintain that their percentage of distribution increase is reasonable and an appropriate part of the ESP package, in recognition of Staff's preference for a distribution rider and to address various parties' concerns regarding the accuracy of AEP-Ohio's cost estimates for gridSMART Phase I, the Companies would agree to a gridSMART Phase I rider set at the 2009 revenue requirement subject to annual true-up and reconciliation based on CSP's prudently incurred net costs (Cos. Reply Br. at 70; Cos. Ex. 1, Exhibit DMR-4).

The Commission believes it is important that steps be taken by the electric utilities to explore and implement technologies, such as AMI, that will potentially provide long-term benefits to customers and the electric utility. GridSMART Phase I will provide CSP with beneficial information as to implementation, equipment preferences, customer expectations, and customer education requirements. A properly designed AMI system and DA can decrease the scope and duration of electric outages. More reliable service is clearly beneficial to CSP's customers. The Commission strongly supports the implementation of AMI and DA, with HAN, as we believe these advanced technologies are the foundation for AEP-Ohio providing its customers the ability to better manage their energy usage and reduce their energy costs. Thus, we encourage CSP to be more expedient in its efforts to implement these components of gridSMART. While we agree that additional information is necessary to implement a successful Phase I program, we do not believe that all information is required before the Commission can conclude that the program is beneficial to ratepayers and should be implemented. Therefore, we will approve the development of a gridSMART rider, as we agree with the Staff that a rider has several benefits over the proposed annual increase to distribution rates, including separate accounting for gridSMART, an opportunity to approve and update the plan each year, assurance that expenditures are made before cost recovery occurs, and an opportunity to audit expenditures prior to recovery. The Commission notes that recent federal legislation makes matching funds available to smart grid projects. Accordingly, the Companies' gridSMART proposal contained in its proposed ESP to recover $109 million over the term of ESP, should be revised to $54.5 million, which is half of the Companies' requested amount. Additionally, we direct CSP to make the necessary filing for federal matching funds under the American Recovery and Reinvestment Act of 2009 for the balance of the projected costs of gridSMART Phase I. The gridSMART rider shall be initially established at $33.6 million for the 2009 projected expenses subject to annual true-up and reconciliation based on the company's prudently incurred costs.

With the creation of the ESRP rider and the gridSMART rider, the Commission finds that annual distribution rate increases in the amounts of 7 percent for CSP and 6.5 percent for OP to recover the costs for the ESRP and gridSMART programs are unnecessary and should be rejected. Accordingly, the Commission finds that AEP-Ohio's proposed ESP should be modified to include the ESRP rider and the gridSMART rider, as approved herein, and to eliminate the annual distribution rate increases.

B. Riders

1. Provider of Last Resort (POLR) Rider

The Companies proposed to include in their ESP a distribution non-bypassable POLR rider (Cos. App. at 6-8). The POLR charge was proposed to collect a POLR revenue requirement of $108.2 million for CSP and $60.9 million for OP (Cos. Ex. 2-A at 34; Cos. Ex. 1, Exhibit DMR-5). The Companies stated that they have a statutory obligation to be the POLR,[22] and thus, the proposed POLR charge is based on a quantitative analysis of the cost to the Companies to provide to customers the optionality associated with POLR service (Cos. Ex. 2-A at 25-26). AEP-Ohio argued that this charge covers the cost of allowing a customer to remain with the Companies, or to switch to a Competitive Retail Electric Service (CRES) provider and then return to the Companies' SSO after shopping (Id.). To further support the proposed increase, the Companies added that their current POLR charge is significantly below other Ohio electric utilities' POLR charges (Cos. Ex. 2 at 8). The Companies utilized the Black-Scholes Model to calculate their cost of fulfilling

22 See Section 4928.141(A) and 4928.14, Revised Code.

the POLR obligation, comparing the customers' rights to "a series of options on power" (Cos. Br. at 43; Cos. Ex. 2-A at 31). AEP-Ohio listed the five quantitative inputs used in the Black-Scholes Model: 1) the market price of the underlying asset; 2) the strike price; 3) the time frame that the option covers; 4) the risk free interest rate; and 5) the volatility of the underlying asset (Id.). The Companies assert that the resulting POLR charge is conservatively low (Cos. Br. at 44).

The numerous intervenors and Staff opposed the level of POLR charge proposed by the Companies, as well as the use of the Black-Scholes Model to calculate the POLR charge (OPAE/APAC Br. at 14-17; OCC Ex. 11 at 8-14). Specifically, OCC and others questioned the use of the LIBOR rate as the input for the risk-free interest rate (Tr. Vol. X at 165-182, 188-189; Tr. Vol. XI at 166-182). Staff questioned the risk that the POLR charge was intended to compensate the Companies for, explaining that there are only two risks involved: one risk is the risk of customers returning to the SSO and the other risk is that the customers leave and take service from a CRES provider (migration risk) (Staff Ex. 10 at 6). Staff witness Cahaan testified that the risk associated with customers returning to the SSO could be avoided by requiring the customer to return at a market price, instead of the SSO rate, which would either be paid directly by the returning customer or any incremental cost of the purchased power could be flown through the FAC (Id.). Staff witness Cahaan admitted that if customers are permitted to return at the SSO rate, without paying the market price or without compensating the Companies for any incremental costs of the additional purchased power that they would be required to purchase, then the Companies would be at risk (Tr. Vol. XIII at 36-37). Thus, Staff witness Cahaan concluded that, if the risk of returning is addressed, then the migration risk is the only risk that should be compensated through a POLR charge (Id. at 7).

The Companies responded that their risk is not alleviated by customers agreeing to return at market price, arguing that future circumstances or policy considerations may require them to relieve customers of their promises to pay market price when circumstances change (Cos. Ex. 2-A at 27-30). AEP-Ohio's witness expressed skepticism as to a future Commission upholding such promises (Id). AEP-Ohio also opposed recovering any costs for market purchases incurred for returning customers through the FAC as an improper subsidization of those customers who chose to shop, and then return to the electric utility, by non-shopping customers (Cos. Ex. 2-E at 14-16). Furthermore, the Companies claim that their risk of being the POLR exists, regardless of historic or current shopping levels (Id.). Nonetheless, AEP witness Baker testified that, even adopting Staff witness Cahaan's theory that the Companies are only at risk for migration (the right of customers to leave the SSO), migration risk equals approximately 90 percent of the Companies' POLR costs pursuant to the Black-Scholes model (Tr. Vol. XIV at 204-205; Cos. Ex. 2-E at 15-16).

As the POLR, the Commission believes that the Companies do have some risks associated with customers switching to CRES providers and returning to the electric utility's SSO rate at the conclusion of CRES contracts or during times of rising prices. However, we agree with the intervenors and Staff that the POLR charge as proposed by the Companies is too high, but we do not agree that there is no risk or a very minimal risk as suggested by some. As noted by several intervenors and Staff, the risk of returning customers may be mitigated, not eliminated, by requiring customers that switch to an alternative supplier (either through a governmental aggregation or individual CRES providers) to agree to return to market price, and pay market price, if they return to the electric utility after taking service from a CRES provider, for the remaining period of the ESP term or until the customer switches to another alternative supplier. In exchange for this commitment, those customers shall avoid paying the POLR charge. We believe that this outcome is consistent with the requirement in Section 4928.20(J), Revised Code, which allows governmental aggregations to elect not to pay standby service charges, in exchange for agreeing to pay market price for power if they return to the electric utility. Therefore, based on the record before us, we conclude that the Companies' proposed ESP should be modified such that the POLR rider will be based on the cost to the Companies to be the POLR and carry the risks associated therewith, including the migration risk. The Commission accepts the Companies' witness' quantification of that risk to equal 90 percent of the estimated POLR costs,[23] and thus, finds that the POLR rider shall be established to collect a POLR revenue requirement of $97.4 million for CSP and $54.8 million for OP. Additionally, the POLR rider shall be avoidable for those customers who shop and agree to return at a market price and pay the market price of power incurred by the Companies to serve the returning customers. Accordingly, the Commission finds that the POLR rider, which is avoidable, should be approved as modified herein.

2. Regulatory Asset Rider

The Companies proposed to begin the recovery of a variety of regulatory assets that were authorized in various Commission proceedings regarding the Companies' electric transition plan (ETP), rate stabilization plan (RSP), line extension program, green pricing power program, and the transfer of the MonPower's service territory to CSP. In their application, the Companies proposed to begin the amortization of these regulatory assets in 2011 and complete the amortization over an eight-year period. The projected balances at the end of 2010 to amortize are $120.5 million for CSP and $80.3 million for OP. AEP-Ohio asserts that these projected balances, or the value on June 30, 2008, were not challenged by any party. To recover these regulatory assets, the Companies created a RAC rider to be collected from customers in 2011 through 2018. The rider revenues will be reconciled on an annual basis for any over- or under-recoveries.

23 See Cos. Ex. 1, Exhibit DMR-5.

Staff proposed that the eight-year amortization period proposal be deferred until the Companies' next distribution rate case where all components of distribution rates are subject to review (Staff Ex. 1 at 4). AEP-Ohio responded that SB 221 authorizes single-issue ratemaking related to distribution service, which is what it is proposing. AEP-Ohio also notes that the only opposition to the Companies' proposal is with regard to the collection of the historic regulatory assets, which was by Staff (Cos. Reply Br. at 94). The Companies submit that Staff's preference to deal with this issue in a distribution rate case is irrelevant and inconsistent with the statute.

The Commission finds that the Companies have not demonstrated that the creation of the RAC rider in its proposed ESP, as a single-issue ratemaking item for distribution infrastructure and modernization incentives, fulfills the requirements of SB 221 or advances the state policy. Therefore, the Commission finds that the RAC rider should not be approved in this proceeding. We note, however, that we agree with Staff that the consideration of the requested amortization of regulatory assets is more appropriate within the context of a distribution rate case where all distribution related costs and issues can be examined collectively. Accordingly, the Commission finds that AEP-Ohio's proposed ESP should be modified to eliminate the RAC rider.

3. Energy Efficiency, Peak Demand Reduction, Demand Response, and Interruptible Capabilities

(a) Energy Efficiency and Peak Demand Reduction

Section 4928.66, Revised Code, requires the electric utilities to implement energy efficiency programs that will achieve energy savings and peak demand programs designed to reduce the electric utility's peak demand. Specifically, an electric utility must achieve energy savings in 2009, 2010, and 2011 of .3 percent, .5 percent, and .7 percent, respectively, of the normalized annual kWh sales of the electric utility during the preceding three calendar years. This savings continues to rise until the cumulative savings reach 22 percent by 2025. Peak demand must be reduced by one percent in 2009 and by .75 percent annually until 2018.

CSP and OP include, as part of their ESP, an unavoidable Energy Efficiency and Peak Demand Reduction Cost Recovery Rider (EE/PDR rider). The estimated annual DSM program cost (including both EE and PDR) is to be trued-up annually to actual cost and compared to the amortization of the actual deferral on an annual basis via the EE/PDR rider (Cos. Ex. 6 at 47-48).

(b) Baselines and Benchmarks

In the ESP, the Companies have established the baselines for meeting the benchmarks for statutory compliance by weather normalizing retail sales, excluding economic development load, accounting for the load of former MonPower service territory and the Ormet/Hannibal Real Estate load, accounting for future load growth due to the Companies' economic development efforts, and accounting for increased load associated with the funds for economic development purposes pursuant to the order in Case No. 04-169-EL-ORD (RSP Order)[24] (Cos. Ex. 8 at 4; Cos. Ex. 2A at 46-51). The Companies contend that its process is consistent with Sections 4928.64(B) and 4928.66(A)(2)(a), Revised Code. The Companies request that the methodology be adopted in this proceeding so as to provide the Companies clear guidance with statutory compliance mandates. Further, the Companies reserve their right to request additional adjustments due to regulatory, economic, or technological reasons beyond the reasonable control of the Companies.

As to the calculation of the Companies' baseline, Staff asserts that the former MonPower load was acquired prior to the three-year period (2006 to 2008) and is not truly economic development. Therefore, Staff contends that the MonPower load is not a reasonable adjustment to the baseline. Staff suggests that the Companies' savings and peak demand reductions for 2009 be as set forth by Staff witness Scheck (Staff Ex. 3 at 6-8, Ex. GCS-1 and Ex. GCS-2). Staff recommends that CSP and OP make a case-by-case filing with the Commission to receive credit for the energy savings and peak demand reduction efforts of the electric utility's mercantile customers. Staff argues that because programs like PJM's demand response programs are not committed for integration into the electric utilities' energy efficiency and peak reduction programs, such credits should not count towards AEP-Ohio's annual benchmarks and retail customers who have such agreements should not receive an exemption from AEP-Ohio's energy efficiency cost recovery mechanism (Staff Br. at 17-19; Staff Ex. 3 at 6-11).

Kroger recommends an opt-out provision of the rider for non-residential customers that are above a threshold aggregate load (10 MW at a single site or aggregated at multiple sites) within the AEP-Ohio service territories. Kroger proposes that, at the time of the opt-out request, the customer would be required to self-certify or attest to AEP-Ohio that for each facility, or aggregated facilities, the customer has conducted an energy audit or analysis within the past three years and has implemented or plans to implement the cost-effective measures identified in the audit or analysis. Kroger argues that the unavoidable rider penalizes customers who have implemented cost efficient DSM measures. Kroger contends that this is consistent with the intent of Section 4928.66(A)(2)(c), Revised Code (Kroger Ex. 1 at 13-14).

IEU notes that the Commission has previously rejected a proposal similar to Kroger's opt-out proposal with a demand threshold for mercantile customers in Duke's

---

24 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 04-169-EL-ORD, Opinion and Order (January 26, 2005) (RSP Order).

ESP case.[25] IEU urges the Commission, consistent with Section 4928.66, Revised Code, and its determination in the Duke ESP case, to reject Kroger's request (IEU Reply Br. at 22).

The Commission concludes that the acquisition of the former MonPower load should not be excluded from baseline. The MonPower load was not a load that CSP served and would have lost, but for some action by CSP. Therefore, we find that the Companies' exclusion of the MonPower load in the energy efficiency baseline is inappropriate. The Commission does not believe that all economic development should automatically result in an exclusion from baseline. On the other hand, we agree with the Companies' adjustment to the baseline for the Ormet load. We note that the Companies and Staff agree that the impact of customer-sited specific DSM resources will be included in the Companies' compliance benchmarks and adjusted for any existing resources that had historic implication during the years 2006-2008. The Commission also recognizes that Staff and the Companies agree that the appropriate approach would be for the Companies to make case-by-case filings with the Commission to receive credit for contributions by mercantile customers.

In regards to Kroger's recommendation, for an opt-out process for certain commercial or industrial customers, the Commission finds Kroger's proposal, as advocated by Kroger witness Higgins, too speculative. It is best that the Commission determine the inclusion or exemption of a mercantile customer's DSM on a case-by-case basis. We note that Section 4928.66(A)(2)(c), Revised Code, provides, in pertinent part, the following:

> Any mechanism designed to recover the cost of energy efficiency and peak demand reduction programs under divisions (A)(1)(a) and (b) of this section may exempt mercantile customers that commit their demand-response or other customer-sited capabilities, whether existing or new, for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs, if the commission determines that that exemption reasonably encourages such customer to commit those capabilities to those programs.

This provision of the statute permits the Commission to approve a rider that exempts mercantile customers who commit their capabilities to the electric utility. However, the statute does not dictate a minimum consumption level. For these reasons, the Commission rejects Kroger's proposal.

25 *In re Duke Energy Ohio, Inc.*, Case No. 08-920-EL-SSO, et al., Opinion and Order (December 17, 2008) (Duke ESP Order).

(c) Energy Efficiency and Peak Demand Reduction Programs

The Companies propose ten energy efficiency and peak demand reduction programs that will be refined and supplemented at the completion of the Market Potential Study through the creation of a working collaborative group of stakeholders.

As part of the Companies' energy efficiency and peak demand reduction plan, the Companies propose to spend $178 million on the following programs: (1) Residential Standard Offer Program, Small Commercial and Industrial Standard Offer Program, Commercial and Industrial Standard Offer Program; (2) Targeted Energy Efficient Weatherization Program; (3) Low Income Weatherization Program; (4) Residential and Small Commercial Compact Fluorescent Lighting Program; (5) Commercial and Industrial Lighting Program; (6) State and Municipal Light Emitting Diode Program; (7) Energy Star® New Homes Program; (8) Energy Star® Home Appliance Program; (9) Renewable Energy Technology Program; (10) Industrial Process Partners Program (Cos. Ex. 4 at 20-22). OEG supports the Companies EE/PDR rider as a reasonable proposal (OEG Ex. 2 at 13). OPAE generally supports the Companies proposed programs as reasonable for low-income and moderate income customers. However, OPAE requests that the Companies be required to empower the collaborative to design appropriate programs, provide funding for existing programs that can rapidly provide energy efficiency and demand response reductions, and to retain a third-party administrator to manage program implementation (OPAE Ex. 1 at 16-17; OPAE/APAC Br. at 21-22).

Staff also generally approves of the Companies' demand-side management and energy efficiency programs. However, Staff notes that certain of AEP-Ohio's programs are expensive and should be required to comply with the Total Resources Cost Test (Staff Br. at 17-19; Staff Ex. 3 at 6-11).

OCC makes five specific recommendations (OCC Ex. 5 at 9). First, OCC contends that the Companies DSM programs for low-income residential customers are adequate but should be available to all residential customers in Ohio. Second, OCC recommends that AEP-Ohio work with Columbia Gas of Ohio, Inc., to develop a one-stop home performance program in year two of the ESP. Third, OCC recommends that programs for consumers above 175 percent of the federal poverty level should be competitively bid and customers charged for services according to a sliding fee scale based on income. Fourth, like Staff, OCC contends that all programs should be evaluated for cost-effectiveness pursuant to the Total Resource Cost Test. Finally, OCC expresses concern regarding the administrative costs of the programs, in comparison to energy efficiency programs offered by other Ohio utilities and recommends that the administrative cost of the DSM program (administrative, educational, and marketing expenses) be determined by the collaborative, and limited to 25 percent of the program costs to ensure that the majority of the program dollars reach the customers (Id.).

The Commission directs, as the Companies submit in their ESP, that the collaborative process be used to contain administrative cost of the EE/PDR programs and to ensure, with the possible exception of low-income weatherization programs, that all programs comply with the Total Resource Cost Test. We do not agree with OPAE/APAC that a third-party administrator is necessary to act as a liaison between the Companies and the collaborative. Thus, the Companies should proceed with the proposed EE/PDR programs proposed in its ESP as justified by the market project study and as refined by the collaborative.

(d) Interruptible Capacity

The Companies count their interruptible service towards their peak demand reduction requirements in accordance with Section 4928.66(A)(2)(b), Revised Code. More specifically, the Companies propose to increase the limit of OP's Interruptible Power-Discretionary Schedule (Schedule IRP-D) to 450 Megawatts (MW) from the current limit of 256 MW and to modify CSP's Emergency Curtailable Service (ECS) and Price Curtailable Service (PCS) to make the services more attractive to customers. The Companies request that the Commission recognize the Companies' ability to curtail customer usage as part of the peak demand reductions (Cos. Ex. 1 at 5-6).

Staff advocates that any credits awarded for the annual peak demand reduction targets for the Companies' interruptible programs should only apply when actual reductions occur (Staff Ex. 3 at 11). OCEA argues that interruptible load should not be counted toward AEP-Ohio's peak demand reduction as it is contrary to the intent of SB 221 to improve grid reliability and would be based on load under the control of the customer rather than AEP-Ohio. Further, OCEA argues that the Companies would reap an inequitable benefit from interruptible load (possibly in the form of off-system sales) that is not reduced at peak which would allow the Companies to sell the load or avoid buying additional power. OCEA contends that any such benefit is not passed on to customers (OCEA Br. at 102-103; Tr. Vol. IX at 68-69).

The Companies argue that capacity associated with interruptible customers should be counted toward compliance with the requirements of Section 4928.66, Revised Code, as the ability to interrupt is a significant demand reduction resource to AEP-Ohio. Further, the Companies state that interruptions have a real impact on customers and the Companies do not want to interrupt service when there is no system or market requirement to do so (Cos. Ex. 1 at 6). The Companies note that Section 4928.66(A)(1)(b), Revised Code, requires the electric utility to implement programs "designed to achieve" a specified peak demand reduction level as opposed to "achieve" a specified level of energy savings as required by Section 4928.66(A)(1)(a), Revised Code. Staff witness Scheck admits that the plain meaning of "designed to achieve" and "achieve" are different (Tr. Vol. VIII at 208). The Companies argue that the different language in the statutory requirements is intended to recognize the differences between energy efficiency programs and peak demand reduction programs. As such, the Companies contend that Staff's position is not supported by the language of the statute and it does not overcome the policy rationale presented by the Companies. The Companies also note that, in the context of integrated resource planning, interruptible capabilities are counted as capacity and evaluated in the need to plan for new power facilities. Finally, the Companies note that the Commission defines native load as internal load minus interruptible load.[26] For these reasons, the Companies contend that their interruptible capacity should be counted toward their compliance with the peak demand reduction benchmarks (Cos. Br. 114-115; Cos. Reply Br. at 90-93).

Further, the Companies claim that interruptible customers receive a benefit in the form of a reduced rate for taking interruptible service irrespective of whether their service is actually curtailed. AEP-Ohio notes that it includes such interruptible service as a part of its supply portfolio, unlike the PJM demand response programs, which is based on PJM's zonal load. Therefore, AEP-Ohio asserts there is no disparate treatment between counting interruptible capabilities as part of peak demand reduction compliance requirements and prohibiting retail participation in wholesale PJM demand reduction programs (Cos. Reply Br. at 90-91). Further, as to OCEA's claims regarding interruptible customer load, the Companies argue that the assertions are without merit or basis in the statute. The Companies argue that counting interruptible load fits squarely within the stated intent of the statute that programs be "designed to achieve" peak demand reduction and facilitates the ability to avoid the construction of new power plants. As to the customer's control of interruptible load argument, the Companies note that the customer has a choice to "buy through" to obtain replacement power at market prices to avoid curtailment and in such situations the Companies' supply portfolio is not affected. Regarding OCEA's assertion that the Companies might benefit from the associated interruption, AEP-Ohio acknowledges that off-system sales are indirectly possible, as are other circumstances, based on the market price. Nonetheless, AEP-Ohio argues that such does not alter the fact that AEP-Ohio's retail supply obligation is reduced and the supply portfolio is not accessed to serve the retail customer. Accordingly, AEP-Ohio asserts that interruptible tariff capabilities should count toward the Companies' peak demand reduction compliance requirements.

The Commission agrees with the Staff and OCEA that interruptible load should not be counted in the Companies' determination of its EE/PDR compliance requirements unless and until the load is actually interrupted. As the Companies recognize, it is imperative, with regard to the PJM demand response programs, that the Companies have

26 See proposed Rule 4901:5-5-01(Q), O.A.C., *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technologies and Resources, and Emission Control Reporting Requirements, and Amendment of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928, Revised Code, to Implement Senate Bill No. 221*, Case No. 08-888-EL-ORD (Green Rules).

some control or commitment from the customer to be included as a part of AEP-Ohio's Section 4928.66, Revised Code, compliance requirements.

Further, the Commission emphasizes that we expect that applications filed pursuant to Section 4928.66(A)(2)(b), Revised Code, to be initiated by the electric utility only when the circumstances are justified. At the time of such filing by an electric utility, the Commission will determine whether the electric utility's continued compliance is possible under the circumstances.

4. Economic Development Cost Recovery Rider and the Partnership with Ohio Fund

The Companies' ESP application includes an unavoidable Economic Development Rider as a mechanism to recover costs, incentives and foregone revenue associated with new or expanding Commission-approved special arrangements for economic development and job retention. The Companies propose quarterly filings to establish rates based on a percentage of base distribution revenue subject to a true-up of any under- or over-collection in subsequent quarterly filings. In addition, the Companies propose the development of a "Partnership with Ohio" fund from shareholders. The fund would consist of a $75 million commitment, $25 million per year of the ESP, from shareholders. The Companies' goal is for approximately half of the fund to be used to provide assistance to low-income customers, including energy efficiency programs for such customers, and the balance to be used to attract and retain business development within the AEP-Ohio service area (Cos. Ex. 1 at 12; Cos. Ex. 3 at 15-16; Cos. Ex. 6 at 49; Tr. Vol. III at 115-119).

OCC proposes that the Commission continue its policy of dividing the recovery of forgone revenue subsidies equally from AEP-Ohio's shareholders and customers or require shareholders to pay a larger percentage. Further, OCC expresses some concern that the rider may be used in an anti-competitive manner as it is not likely that incentives and/or discounts will be offered to shopping customers. To address OCC's anticompetitive concerns, OCC proposes that the Commission make the economic development rider avoidable or establish the charge as a percentage of the customer's entire bill rather than a percentage of distribution charges. OCC also recommends that all parties participate in the initial and annual review of the economic development contracts and that, at the annual review, if the customer has not fulfilled its obligation, the arrangement be cancelled, the subsidy paid back, and the Companies directed to credit the rider for the discounts (OCC Ex. 14 at 4-8; OCEA Br. at 104-106).

The Companies contend that Section 4905.31, Revised Code, as amended by SB 221, explicitly provides for the recovery of foregone revenues for entering into reasonable arrangements for economic development and, thus, OCC's recommendation to continue the Commission's previous policy is misplaced. Further, the Companies note that the

Commission's approval of any special arrangement will include a public interest determination. Thus, the Companies argue that OCC's recommendation for all parties to initially and annually review economic development arrangements is unnecessary, bureaucratic and burdensome, and should be rejected. The Companies contend that economic development and full recovery of the foregone revenue for economic development is consistent with SB 221 and a significant feature of the Companies' ESP, which should not be modified by the Commission (Cos. Br. at 132).

The Commission finds that OCC's concerns are unfounded and unnecessary at this stage. The Commission is vested with the authority to review and determine whether or not economic development arrangements are in the public interest. OCC's request is denied.

OPAE and APAC argue that the Companies have not provided any assurances that the $75 million will be spent from the Partnership with Ohio fund if the Commission modifies the ESP and fails to state how much of the fund will be spent on low-income, at-risk populations (OPAE/APAC Br. at 19-20). The Companies submit that, if the ESP is modified, they can then evaluate the modified ESP in its entirety to determine whether this fund proposal contained in the ESP requires elimination or modification (Tr. Vol. III at 137-138; Tr. Vol. X at 232-233).

While the Partnership with Ohio fund is a key component of the economic development proposal, in light of the modifications made to the ESP pursuant to this opinion and order, we find that the Companies' shareholders should fund the Partnership with Ohio fund, at a minimum of $15 million, over the three-year ESP period, with all of the funds going to low-income, at-risk customer programs. Accordingly, we direct AEP-Ohio to consult with Staff to administer the program established herein.

C. Line Extensions

In its ESP, AEP-Ohio proposes to modify certain existing line extension policies and charges included in its schedules (Cos. Ex. 10 at 5-14). Specifically, the Companies requested a modification to their definition of line extension and system improvements, a continuation of the up-front payment concept established in Case No. 01-2708-EL-COI,[27] an increase in the up-front residential line extension charges, implementation of a uniform, up-front line extension charge for all nonresidential projects, the elimination of the end use customer's monthly surcharge, and the elimination of the alternative construction option (Id. at 3-4, 6-7, 10-12).

---

27 *In the Matter of the Commission's Investigation into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions,* Case No. 01-2708-EL-COI, et al., Opinion and Order (November 7, 2002).

Staff testified that distribution-related issues and costs, such as those related to line extensions, be examined in the context of a distribution rate case (Staff Ex. 13 at 4). IEU concurred with Staff's position (IEU Br. at 25). OCC also agreed and added that AEP-Ohio should be required to demonstrate in that rate proceeding that its costs related to line extensions have substantially increased, thereby justifying AEP-Ohio's proposed increase to the up-front residential line extension charges (OCEA Br. at 87).

Per SB 221, the Commission is required to adopt uniform, statewide line extension rules for nonresidential customers within six months of the effective date of the law. The Commission adopted such rules for nonresidential and residential customers on November 5, 2008.[28] Applications for rehearing were filed, which the Commission is still considering. Accordingly, the new line extension rules are not yet effective.

The Commission finds that AEP-Ohio has not demonstrated that its proposal to continue, in its ESP, its existing line extension policies regarding up-front payments, with modifications, is consistent with SB 221 or advances the policy of the state. Therefore, in light of the SB 221 mandate that the Commission adopt statewide line extension rules that will apply to AEP-Ohio, we do not believe that it makes sense to adopt a unique policy for AEP-Ohio at this time. As such, the Companies' ESP should be modified to eliminate the provision regarding line extensions, which would have the effect of also eliminating the alternative construction option as requested by the Companies. AEP-Ohio is, however, directed to account for all line extension expenditures, excluding premium services, in plant in service until the new line extension rules become effective, where the recovery of such will be reviewed in the context of a distribution rate case. The Companies may continue to charge customers for premium services pursuant to their existing practices. .

V. TRANSMISSION

In its ESP, the Companies requested to retain the current TCRR, except the marginal loss fuel credit will now be reflected in the FAC instead of the TCRR. We concur with the Companies' request. We find the Companies' request to be consistent with our determination in the Companies' recent TCRR Case,[29] and thus, approve the TCRR rider as proposed by the Companies. Additionally, as contemplated by our prior order in the TCRR Case, any overrecovery of transmission loss-related costs, which has

---

[28] See *In the Matter of the Commission's Review of Chapters 4901:1-9, 4901:1-10, 4901:1-21, 4901:1-22, 4901:1-23, 4901:1-24, and 4901:1-25 of the Ohio Administrative Code*, Case No. 06-653-EL-ORD, Finding and Order (November 5, 2008), Entry on Rehearing (December 17, 2008) (06-653 Case).

[29] *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company to Adjust Each Company's Transmission Cost Recovery Rider*, Case No. 08-1202-EL-UNC, Finding and Order (December 17, 2008) (TCRR Case).

occurred due to the timing of our approval of the Companies' ESP and proposed FAC, shall be reconciled in the over/underrecovery process in the Companies' next TCRR rider update filing.

VI. OTHER ISSUES

A. Corporate Separation

1. Functional Separation

In its ESP application, AEP-Ohio requested to remain functionally separated for the term of the ESP, as was previously authorized by the Commission in the Companies' rate stabilization plan proceeding,[30] pursuant to Section 4928.17(C), Revised Code (Cos. App. at 14; Cos. Br. at 86). The Companies also requested to modify their corporate separation plan to allow each company to retain its distribution and, for now, transmission assets and that, upon the expiration of functional separation, the Companies would sell or transfer their generation assets to an affiliate (Id.).

Staff testified that the Companies' generating assets have not been structurally separated from the operating companies (Staff Ex. 7 at 2-3). Staff also recommended that, in accordance with the recently adopted corporate separation rules issued by the Commission in the SSO Rules Case,[31] the Companies should file for approval of their corporate separations plan within 60 days after the rules become effective. Furthermore, Staff proposes that the Companies' corporate separation plan should be audited by an independent auditor within the first year of approval of the ESP, the audit should be funded by the Companies, but managed by Staff, and the audit should cover compliance with the Commission's rules on corporate separation (Staff Ex. 7 at 3-4). No party opposed AEP-Ohio's request to remain functionally separate.

Accordingly, the Commission finds that, while the ESP may move forward for approval, as noted by Staff, in accordance with our recently adopted rules in the SSO Rules Case, the Companies must file for approval of their corporate separation plan within 60 days after the rules become effective.

---

30 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 04-169-EL-UNC, Opinion and Order at 35 (January 26, 2005).

31 *In the Matter of the Adoption of Rules for Standard Service Offer, Corporate Separation, Reasonable Arrangements, and Transmission Riders for Electric Utilities Pursuant to Sections 4928.14, 4928.17, and 4905.31, Revised Code, as amended by Amended Substitute Senate Bill No. 221*, Case No. 08-777-EL-ORD, Finding and Order (September 17, 2008), and Entry on Rehearing (February 11, 2009) (SSO Rules Case).

2. Transfer of Generating Assets

The Companies request authorization for CSP to sell or transfer two recently acquired generating facilities (Waterford Energy Center and the Darby Electric Generating Station) that have not been included in rate base for ratemaking purposes and the costs of operating and maintaining the plants are not built into the current rates) (Cos. Ex. 2-A at 42; Cos. Ex. 2-E at 20). CSP purchased the Waterford Energy Center, a natural gas combined cycle power plant, on September 28, 2005, which has a generating capacity of 821 MW (Cos. App. at 14). On April 25, 2007, CSP purchased the Darby Electric Generating Station, a natural gas simple cycle generating facility, with a generating capacity of 480 MW and a summer capacity of approximately 450 MW (Id.). Although AEP-Ohio is requesting authority to transfer these generating assets pursuant to Section 4928.17(E), Revised Code, CSP has no immediate plans to sell or transfer the generating facilities. If AEP-Ohio obtains authorization to sell these generating assets through this proceeding, AEP-Ohio will notify the Commission prior to any such transaction (Id. at 15).

Through its application, the Companies also notify the Commission of their contractual entitlements/arrangements to the output from the Ohio Valley Electric Corporation generating facilities and the Lawrenceburg Generation Station that the Companies intend to sell or transfer in the future, but argue that any sale or transfer of those entitlements do not require Commission authorization because the entitlements do not represent generating assets wholly or partly owned by the Companies pursuant to Section 4928.17(E), Revised Code (Id.).

The Companies argue that, if the Commission does not grant authorization to transfer these plants or entitlements, then any expense related to the plants or entitlements not recovered in the FAC should be recovered in the non-FAC portion of the generation rate (Cos. Br. at 89; Cos. Ex. 2-E at 20-21). AEP-Ohio states that this rate recovery would include approximately $50 million of carrying costs and expenses related to the Waterford Energy Center and the Darby Electric Generating Station annually, and $70 million annually for the contract entitlements (Id.).

Staff witness Buckley testified that, while Staff does not necessarily disagree with the proposal to transfer the Waterford Energy Center and the Darby Electric Generating Station facilities, Staff believes that the transfers could have a potential financial and policy impact at the time of the transfer (Staff Ex. 7 at 3). Thus, Staff recommended that the Companies file a separation application, in accordance with the Commission's SSO rules, at the time that the transfer will occur (Id.). Several other parties agree that, in the absence of a current plan to sell or transfer, the Commission should not approve a future sale or transfer. Rather, the parties argue that the Companies should seek approval, pursuant to Section 4928.17(E), Revised Code, at the time of the actual sale or transfer (OCEA Br. at 100; IEU Br. at 26-27; OEG Br. at 16).

The Commission agrees with Staff and the intervenors that the request to transfer the Waterford Energy Center and the Darby Electric Generating Station facilities, as well as any contractual entitlements/arrangements to the output of certain facilities, is premature. AEP-Ohio should file a separate application, in accordance with the Commission's rules, at the time that it wishes to sell or transfer these generation facilities. The Commission, however, recognizes that these generating assets have not and are not included in rate base and, thus, the Companies cannot collect any expenses related thereto, even if the facilities or contractual outputs have been used for the benefit of Ohio customers. If the Commission is going to require that the electric utilities retain these generating assets, then the Commission should also allow the Companies to recover Ohio customers' jurisdictional share of any costs associated with maintaining and operating such facilities. Accordingly, we find that while the Companies still own the generating facilities, they should be allowed to obtain recovery for the Ohio customers' jurisdictional share of any costs associated therewith. Thus, we believe that any expense related to these generating facilities and contract entitlements that are not recovered in the FAC shall be recoverable in the non-FAC portion of the generation rate as proposed by the Companies. The Commission, therefore, directs AEP-Ohio to modify its ESP consistent with our determination herein.

B. Possible Early Plant Closures

The Companies include as a part of their application in these cases a request for authority to establish a regulatory asset to defer any unanticipated net cost associated with the early closure of a generating unit or units. The Companies assert that, during the ESP period, generating units may experience failures or safety issues that would prevent the Companies from continuing to cost-effectively operate the generation unit prior to the end of the depreciation accrual (unanticipated shut down) (Cos. App. at 18-19; Cos. Ex. 2-A at 51-52). The Companies request authority to include net early closure cost in Account 182.3, Other Regulatory Assets. In the event of an unanticipated shut down, the Companies state they will timely file a request with the Commission for recovery of such prudent early closure costs via a non-bypassable rider over a relatively short period of time. The Companies are requesting that the rider include carrying cost at the WACC rate (Cos. App. at 18-19; Cos. Ex 6 at 25-26). The Companies also request authority to come before the Commission to determine the appropriate treatment for accelerated depreciation and other net early closure costs in the event that the Companies find it necessary to close a generation plant earlier that otherwise expected (earlier than anticipated shut down) (Cos. Ex. 6 at 28).

OCEA posits that the Companies' request for accounting treatment for early plant closure is wrong and should be rejected. OCEA reasons that the plant was included in rate base under traditional ratemaking regulation to give the Companies the opportunity to earn a return on the investment and the Companies accepted the risk that the plant might not be fully depreciated when it was removed from service. OCEA asserts it is not appropriate to guarantee the Companies recovery of their investment. If the Commission determines to allow the Companies to establish the requested accounting treatment, OCEA asks that the Commission adopt the Staff's "offset" recommendation (OCEA Br. at 102).

Staff argues that the value of the generation fleet was determined in the Companies' ETP cases,[32] wherein, pursuant to the stipulation, AEP-Ohio agreed not to impose any lost generation cost on switching customers during the market development period. Staff notes that, although the economic value of the generation plants was never specifically addressed by the Commission, it is reasonable to assume that the net value of the Companies' fleet was not stranded. Accordingly, Staff opposes the Companies' requests to impose on customers the cost or risk of uneconomic plants without accounting for the offset of the positive economic value of the rest of the Companies' generation plants (Staff Ex. 1 at 8).

Based on the record in this proceeding, the Commission is not convinced that it is appropriate to approve the Companies' request for recovery of net cost associated with an unanticipated shut down. Despite the arguments of the Companies to the contrary, we are persuaded by the arguments of the Staff that there may be offsetting positive value associated with the Companies generation fleet. Accordingly, while we will grant the Companies the authority to establish the accounting mechanism to separate net early closure cost, the Companies must file an application before the Commission for recovery of such costs. Accordingly, this aspect of the Companies' ESP application is denied. As to the Companies' request for authority to file with the Commission to determine the appropriate treatment associated with an earlier-than-anticipated shut down, the Commission finds this aspect of the application to be reasonable and, accordingly, the request should be granted.

C. <u>PJM Demand Response Programs</u>

Through the ESP, the Companies propose to revise certain tariff provisions to prohibit customers receiving SSO from participating in the demand response programs offered by PJM, either directly or indirectly through a third-party. Under the PJM programs retail customers can receive payment for being available to curtail even if the

---

32 *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP and 99-1730-EL-ETP, Opinion and Order at 15-18 (September 28, 2000).

customer's service is not actually curtailed. AEP-Ohio argues that allowing its retail customers receiving SSO to also participate in PJM demand response programs is a no-win situation for AEP-Ohio and its other customers and inconsistent with the requirements of SB 221. The Companies contend that PJM demand response programs are intended to ensure the proper price signal to wholesale customers, not to address retail rate issues (Cos. Ex. 1 at 5-7). AEP-Ohio argues that retail customers should participate through AEP-Ohio-sponsored and Commission-approved programs. The Companies contend that FERC has granted state commissions, or- more precisely, the "relevant electric retail regulatory authority," the authority to preclude retail customer participation in wholesale demand response programs. *Wholesale Competition in Regions with Organized Electric Markets* (Docket Nos. RM07-19-000 and AD07-7-000), 125 FERC ¶ 61,071 at 18 CFR Part 35 (October 17, 2008) (Final Rule) (Cos. Br. at 119)

AEP-Ohio notes that it has consistently challenged retail customers' ability to participate in such programs and argued that the terms and conditions of its tariff prohibited such and, therefore, demand response retail participants should not be surprised by the Companies' position in this proceeding (Tr. Vol. IX at 212). AEP-Ohio argues that Ohio businesses participating in PJM's demand response programs have not invested their own capital or assets, taken any financial risk, or added any value to the services for which they are being compensated through PJM. The Companies assert, as stated by Staff witness Scheck, that the PJM demand response programs cost AEP-Ohio's other customers as the load of such PJM program participants continues to count toward the Companies' Fixed Resource Requirements (FRR) option and such cost is reflected in AEP-Ohio's retail rates (Tr. Vol. VIII at 165-166). Further, the PJM program participant/customer's ability to interrupt is of no use to AEP-Ohio, as the Companies claim that PJM's curtailment request is based on PJM's zonal load and not AEP-Ohio's peak load (Cos. Br. at 122-123).

The Companies reason that SB 221 includes a process whereby mercantile customer-sited resources can be committed to the utility to comply with the peak demand reduction benchmarks as set forth in Section 4928.66(A)(2)(d), Revised Code. Further, AEP-Ohio argues that it is unclear how the interruptible capacity of a customer participating in PJM's demand response program can count toward the Companies' benchmarks without being under the control of the Companies and "designed to achieve" peak demand reductions as required by the statue. As such, the Companies argue that, if participation in the PJM demand response program is allowed, PJM will be in direct competition with the electric distribution companies' efforts to comply with energy efficiency and peak demand reduction benchmarks and thus, render the mercantile customer commitment provisions largely ineffective. For these reasons, AEP-Ohio states that it should incorporate participation in PJM's demand response programs through AEP-Ohio and AEP-Ohio would then be in a position to pass some of the economic benefits associated with participation in PJM programs on to retail customers through complementary retail tariff programs and to pursue mercantile customer-sited arrangements to achieve benchmark compliance, thus allowing the Companies to avoid duplicate supply costs (Cos. Br. at 124-126).

This aspect of the Companies' ESP proposal is opposed by Integrys, OMA, Commercial Group, OEG, and IEU. Most of the intervenors contend that AEP-Ohio, in essence, considers retail customer participation in PJM programs the reselling of power provided to them by AEP-Ohio. Integrys makes the most comprehensive arguments opposing AEP-Ohio's request for approval to prohibit customer participation in the PJM demand response programs. Integrys argues that 18 C.F.R. 35.28(g) only permits this Commission to prohibit a retail customer's participation in demand response programs at the wholesale level through law or regulation. Section 18 C.F.R. 35.28(g) states:

> Each Commission-approved independent system operator and regional transmission organization must permit a qualified aggregator of retail customers to bid demand response on behalf of retail customers directly into the Commission-approved independent system operator's or regional transmission organization's organized markets, *unless the laws and regulations of the relevant electric retail regulatory authority expressly do not permit a retail customer to participate*. [Emphasis added.]

Thus, Integrys reasons that a ban on participation in wholesale demand response programs through AEP-Ohio's tariff is not equivalent to an act of the General Assembly or rule of the Commission. Accordingly, Integrys reasons that any attempt by the Commission to prohibit participation in this proceeding is beyond the authority granted by FERC and will be preempted. Further, Integrys and Constellation argue that AEP-Ohio has failed to state under what authority the Commission could bar customer participation in PJM's demand response and reliability programs. Constellation and Integrys posit that it is not in the public interest for the Commission to approve the prohibition from participation in such programs (Constellation Br. at 20-23; Constellation Ex. 2 at 18; Integrys Ex. 2 at 15; Integrys Br. at 2).

Even if the Commission concludes that it has the authority to grant AEP-Ohio's request to revise the tariff as requested, Integrys asserts that the Companies have not met their burden to justify prohibiting participation in PJM demand response programs. Integrys asserts that the request is not properly a part of the ESP applications and should have been part of an application not for an increase in rates pursuant to Section 4909.18, Revised Code. Nonetheless, Integrys concludes that under Section 4928.143 or Section 4909.18, Revised Code, the burden of proof is on the electric utility company to show that its proposal is just and reasonable.

The Companies, according to Integrys and the Commercial Group, have failed to present any demonstration that the Companies' programs are more beneficial to customers than the PJM programs. On the other hand, Integrys asserts that the PJM programs are more favorable to customers than the programs offered by AEP-Ohio as to notification, the number of curtailments per year, the hours of curtailments, payments and payment options, and penalties for non-compliance (Integrys Ex. 2 at 10-12; Commercial Group Br. at 9). In addition, certain interveners note, and the Companies agree, that PJM has not curtailed any customers since AEP-Ohio joined PJM (Tr. Vol. IX at 48). Furthermore, the intervenors contend that participation in the demand response programs provides improved grid reliability and improved efficiency of the market due to competition (Integrys Ex. 2 at 8).

Integrys also notes that the Ohio customers receive significant financial benefits from load serving entities beyond Ohio (Tr. Vol. IX at 52-52, 118). Integrys argues that AEP-Ohio wishes to ban customer participation in wholesale demand response programs to facilitate the increase in OSS of capacity to the benefit of the Companies' shareholders. Integrys reasons that because AEP-Ohio can count load enrolled in its interruptible service offerings as a part of the PJM ILR demand response program, the Companies will receive credit against its FRR commitment. The Companies, according to Integrys, hope that additional load will come from the customers currently participating in PJM's demand response programs in Ohio (Tr. Vol. IX at 53-58; Integrys Br. at 20-22). Integrys proposes, as an alternative to prohibiting customer participation in wholesale demand response programs, that the Commission count participation in the programs towards AEP-Ohio's peak demand reduction goals in accordance with the requirements of Section 4928.66, Revised Code. Integrys argues that the load can be certified, as it is today with the PJM demand response programs, or the electric services company could be required to register the committed load with the Commission.

Furthermore, Integrys reasons that the Commission can not retroactively interfere with existing contracts between customers and the customer's electric service provider in relation to the commitment contracts with PJM. With that in mind and if the Commission decides to grant AEP-Ohio's request to prohibit participation in wholesale demand response programs, Integrys requests that customers currently committed to participate in PJM programs for the 2008-2009 planning period and the 2009-2010 planning period be permitted to honor their commitments (Integrys Br. at 27-28).

Integrys argues that the Companies' claim that taking SSO and participating in a wholesale demand response program is a resale of power and a violation of the terms and conditions of their tariffs is misplaced. Integrys opines that there is no actual resale of energy, but, instead, there is a reduction in the customer's consumption of energy upon a call from the regional transmission operator (in this case, PJM). The customer is not purchasing energy from AEP-Ohio, so any energy purchased by AEP-Ohio can be transferred to another purchaser. Thus, Integrys asserts that AEP-Ohio's argument regarding participation in a wholesale demand response program is fiction and not based on FERC's interpretation of participation in such programs. Finally, Integrys contends that AEP-Ohio's proposal is a violation of Section 4928.40(D), Revised Code, as such prohibits electric utilities from prohibiting the resale of electric generation service.

The Commercial Group asserts, that because AEP-Ohio has not performed any studies or analyses, the Companies' assertion that wholesale demands response programs must be different from a demand response program offered by AEP-Ohio is unsupported by the record (Tr. Vol. IX at 47). The Commercial Group requests that the Companies be directed to design energy efficiency and demand response programs that incorporate all available programs (Commercial Group at Br. 9).

OEG argues that, to the extent there are real benefits to the Companies as well as to their retail customers in the form of improved grid reliability, AEP-Ohio should be required to offer PJM demand response programs to its large industrial customers by way of a tariff rider or through a third-party supplier (OEG Ex. 2 at 13). IEU adds that the Companies currently use the capabilities of their interruptible customers to assist the Companies in satisfying their generation capacity requirements to PJM. According to IEU, SB 221 gives mercantile customers the option of whether or not to dedicate their customer-sited capabilities to the Companies for integration into the Companies' portfolio (IEU Ex. 1 at 12).

Constellation argues that AEP-Ohio's proposal violates Section 4928.20, Revised Code, and the clear intent of SB 221. Further, Constellation argues that approving AEP-Ohio's request to prohibit Ohio businesses from conservation programs during this period of economic hardship is ill-advised, especially considering that other businesses with which Ohio businesses' must compete are able to participate in the PJM programs. As such, consistent with the Commission's decision in Duke's ESP case (Case No. 08-920-EL-SSO, et al.), Constellation encourages the Commission to reject AEP-Ohio's request to prohibit SSO customers from participating in PJM demand response programs and give Ohio's business customers all available opportunities to reduce demand, conserve energy, and invest in conservation equipment (Constellation Br. at 23). OMA supports the claims of Constellation (OMA Br. at 10).

First, we will address the claims regarding the Commission's authority, or as claimed by Integrys, the lack of authority, for the Commission to determine whether or not Ohio's retail customers are permitted to participate in wholesale demand response programs. The Commission finds that the General Assembly has vested the Commission with broad authority to address the rate, charges, and service issues of Ohio's public utilities as evidenced in Title 49 of the Revised Code. Accordingly, we consider this Commission the entity to which FERC was referring in the Final Rule when it referred to the "relevant electric retail regulatory authority." We are not convinced by Integrys' arguments that a specific act of the General Assembly is necessary to grant the Commission the authority to determine whether or not Ohio's retail customers are permitted to participate in the RTO's demand response programs.

Next, the Commission acknowledges that the PJM programs offer benefits to program participants. We are, however, concerned that the record indicates that PJM demand response programs cost AEP-Ohio's other customers as the load of AEP-Ohio's FRR and the cost of meeting that requirement is reflected in AEP-Ohio's retail rates. Finally, we are not convinced, as AEP-Ohio argues that a customer's participation in demand response programs is the resale of energy provided by AEP-Ohio. For these reasons, we find that we do not have sufficient information to consider both the potential benefits to program participants and the costs to Ohio ratepayers to determine whether this provision of the ESP will produce a significant net benefit to AEP-Ohio consumers. The Commission, therefore, concludes that this issue must be deferred and addressed in a separate proceeding, which will be established pursuant to a subsequent entry. Although we are not making a determination at this time as to the appropriateness of such a provision, we direct AEP to modify its ESP to eliminate the provision that prohibits participation in PJM demand response programs.

D. Integrated Gasification Combined Cycle (IGCC)

In Case No. 05-376-EL-UNC, the Commission concluded that it was vested with the authority to establish a mechanism for recovery of the costs related to the design, construction, and operation of an IGCC generating plant where that plant fulfills AEP-Ohio's POLR obligation and, therefore, approved the Phase I cost recovery mechanism included in the Companies' application.[33] Applications for rehearing of the Commission's IGCC Order were timely filed and by entry on rehearing issued June 28, 2006, the Commission denied each of the applications for rehearing (IGCC Rehearing Entry). Further, the IGCC Rehearing Entry conditioned the Commission's approval of the application, stating that: (a) all Phase I costs would be subject to subsequent audit(s) to determine whether such expenditures were reasonable and prudently incurred to construct the proposed IGCC facility; and (b) if the proposed IGCC facility was not constructed and in operation within five years after the date of the entry on rehearing, all Phase I charges collected must be refunded to Ohio ratepayers with interest.

In this ESP proceeding, AEP-Ohio witness Baker testified that, although the Companies have not abandoned their interest in constructing and operating an IGCC facility in Meigs County, Ohio, certain provisions of SB 221 are a barrier to construction and operation of an IGCC facility. As AEP-Ohio interprets SB 221, the Companies may be

33 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 05-376-EL-UNC, Opinion and Order (April 10, 2006) (IGCC Order).

required to remain in an ESP to assure an opportunity for cost recovery for an IGCC facility; the construction work in process (CWIP) provision which requires the facility to be at least 75 percent complete before it can be included in rate base; the limit on CWIP as a percentage of total rate base which the witness contends causes particular uncertainties since the concept of a generation rate base has no applicability under SB 221; and the effect of "mirror CWIP" (Cos. Ex. 2-A at 52-56). The Companies assert that not only are these barriers to the construction of an IGCC facility but also to any base load generation facility in Ohio. Nonetheless, the Companies state that they are encouraged by the fact that SB 221 recognizes the need for advanced energy resources and clean coal technology, such as an IGCC. Finally, the Companies' witness notes that, since the time the Companies proposed the IGCC facility, CSP has acquired additional generating capacity. According to Company witness Baker, the Companies hope to work with the Governor's administration, the General Assembly, and other interested parties to enact legislation that will make an IGCC facility in Meigs County a reality (Cos. Ex. 2-A at 55-56).

OCEA opines that SB 221 did not eliminate the existing requirement that electric utilities must satisfy to earn a return on CWIP and, since the Companies do not ask for the Commission to make any determination in this proceeding or at any definite time in the future as to the IGCC facility, the Commission should take no action on this issue (OCEA Br. at 98-99).

The Commission notes that the Ohio Supreme Court remanded, in part, the Commission's IGCC Order, for further proceedings and, accordingly, the matter is currently pending before the Commission. Further, as OCEA asserts, there does not appear to be any request from the Companies as to the IGCC facility in this proceeding. Accordingly, we find it inappropriate to rule, at this time, on any matter regarding the Meigs County IGCC facility in this proceeding. We will address the matter as part of the pending IGCC proceeding.

E. Alternate Feed Service

As part of the ESP, the Companies propose a new alternate feed service (AFS) schedule. For customers who desire a higher level of reliability, a second distribution feed, in addition to the customer's basic service, will be offered. Existing AEP-Ohio customers that are currently paying for AFS will continue to receive the service at the same cost under the proposed tariff. Existing customers who have AFS and are not paying for the service will continue to receive such service until AEP-Ohio upgrades or otherwise makes a new investment in the facilities that provide AFS to that customer. At such time, the customer will have 6 months to decide to discontinue AFS, take partial AFS, or continue AFS and pay for the service in accordance with the effective tariff schedule (Cos. Ex. 1 at 8). While OHA supports the implementation of an AFS schedule offering with clearly defined terms and conditions, OHA takes issue with two aspects of the AFS proposal. OHA witness Solganick testified that it is his understanding that the customer will have six months after the customer is notified by the company to make a decision (OHA Ex. 4 at 15). However, OHA witness Solganick advocated that six months was insufficient because critical-use customers, like hospitals, require more lead time to evaluate their electric supply infrastructure and needs (Id.). As such, he argued that 24 months would be more appropriate for planning purposes (Id.). Moreover, OHA argued that, because this issue involves the overall management and cost of operating AEP-Ohio's distribution system, the Commission should defer consideration of the proposed AFS until AEP-Ohio's next distribution rate case where there will be a more deliberate treatment of the issue as opposed to this 150-day proceeding (OHA Br. at 23). OHA believes that a distribution rate proceeding would better ensure that the underlying rate structure for AFS is correct, similar to the argument for deferring decision on other distribution rate issues presented in this ESP proceeding (Id.). Staff and IEU also agree that the issue should be addressed in a distribution rate case (Staff Ex. 1 at 4; IEU Ex. 10 at 11). However, IEU further recommends that the Commission deny the Companies' request because it is not based on prudently incurred costs (IEU Br. at 25-26).

The Companies retort that, while they may have some flexibility as to the notice provided customers, such notice is limited by the Companies' planning horizon for distribution facilities and the lead time required to complete construction of upgraded AFS facilities (Cos. Reply Br. at 122). The Companies reason that, while more than 6 months may be feasible, anything more than 12 months would not be prudent and, in certain rare circumstances, would not facilitate the construction of complex facilities (Id.). Nonetheless, the Companies stated that they will commit to 12 months notice to existing AFS customers for the need to make an election of service (Id.). However, the Companies vehemently opposed deferring approval of their proposed AFS schedule to some future proceeding, stating that the proposed AFS tariff codifies existing practices currently being addressed on a customer-by-customer contract addendum basis (Id.). Further, the Companies argue that IEU has not presented any basis to support the implication that the AFS schedule will recover imprudently incurred costs (Id. at 123). Thus, AEP-Ohio contends there is no good reason to delay implementation of the AFS schedule with the understanding that the Companies will provide up to 12 months notice to existing customers (Id. at 122-123).

As previously noted in this order in regards to other distribution rate issues, the Commission believes that the establishment of various distribution riders and rates, including the proposed new AFS schedule, is best reviewed in a distribution rate case where all components of distribution rates are subject to review.

F. Net Energy Metering Service

The Companies' ESP application includes several tariff revisions. More specifically, the Companies propose toeliminate the one percent limitation on the total rated generation capacity for customer-generators on the Companies' Net Energy

Metering Service (NEMS) and add a new Net Energy Metering Service for Hospitals (NEMS-H). The Companies note that, at the time the ESP application was filed, they had filed a proposed tariff modification to the NEMS and Minimum Requirements for Distribution System Interconnection and Standby Service in Case No. 05-1500-EL-COI.[34] The Companies state that upon approval of the modifications filed in 05-1500, the approved modifications will be incorporated into the tariffs filed in the ESP case (Cos. Ex. 1 at 8-9).

OHA identifies two issues with the Companies' proposed NEMS-H schedule. First, OHA asserts the conditions of service are unduly restrictive to the extent that NEMS-H requires the hospital customer-generator's facility must be owned and operated by the customer and located on the customer-generator's premises. OHA asserts that this requirement prevents hospitals from benefiting from economies of scale by utilizing the expertise of distributed generation or cogeneration companies, centralized operation and maintenance of such facilities, and shared expertise and expenses. Further, OHA asserts that the requirement that the facility be located on the hospital's premises is a barrier because space limitations and legal and/or financing requirements may suggest that a generation facility be located on property not owned by the hospital. OHA argues that the Companies do not cite any regulatory, operational, financial, or other reason why the ownership requirement is necessary. Therefore, OHA requests that the Commission delete this condition of service and require only that the hospital contract for service and comply with the Companies' interconnection requirements (OHA Ex. 4 at 8-10).

AEP-Ohio responds that the requirement that the generation facility be on-site and owned and operated by the customer is a provision of the currently effective NEMS schedule. Further, the Companies argue that economies of scale may be accomplished with multiple hospitals contracting with a third-party to operate and maintain the generation facilities of each hospital. Further, AEP-Ohio argues that there is no support for the claim that efficiencies can not be had if the hospital, rather than a third-party developer, is the ultimate owner of such facilities (Cos. Br. at 128). As to OHA's opposition to the requirement that the hospital own and operate the generation facility on its premises, AEP-Ohio contends that such is required based on the language in the definitions of a customer-generator, net metering system, and self-generator at Section 4928.02(A)(29) to (32), Revised Code (Cos. Reply Br. at 124-125).

Second, OHA argues that the payment for net deliveries of energy should include credits for transmission costs that are avoided and energy losses on the subtransmission and distribution systems that are avoided or reduced. Further, OHA requests that such payments for net deliveries should be made monthly without a requirement for the

---

[34] *In the Matter of the Application of the Commission's Review to Provisions of the Federal Energy Policy Act of 2005 Regarding Net Metering, Smart Metering, Demand Response, Cogeneration, and Power Production*, Case No. 05-1500-EL-COI (05-1500).

customer-generator to request any net payment. The Companies propose to make such payment annually upon the customer's request (OHA Ex. 4 at 11-12). The Companies assert that OHA assumes that the customer-generator's activities will reduce transmission, subtransmission, and distribution line losses and there is no support for OHA's contention. Further, AEP-Ohio argues that annual payment is in compliance with Rule 4901:1-10-28(E)(3), Ohio Administrative Code (O.A.C.) (Cos. Reply Br. at 124). OHA witness Solganick conceded that the annual payment requirement is in compliance with the Commission's rule (Tr. Vol. X at 118-119).

Staff submits that the Companies' proposed NEMS-H tariff is premature given that requirements for hospital net metering are currently pending rehearing before the Commission in the 06-653 Case. Thus, Staff proposes, and OHA supports, that the Companies withdraw their proposed NEMS-H and refile the tariff once the new requirements are effective or with the Companies' next base rate proceeding, whichever occurs first (Staff Ex. 5 at 9; OHA Reply Br. at 9). AEP-Ohio argues that the status of the 06-653 Case should not postpone the implementation of one of the objectives of SB 221 and notes that, if the final requirements adopted in the 06-653 Case impact the Companies' NEMS-H, the adopted requirements can be incorporated into the NEMS-H schedule at that time.

As the Commission is in the process of determining the net energy meter service requirements pursuant to SB 221 in the 06-653 Case, the Commission finds AEP-Ohio's revisions to its net energy metering service schedules premature. Therefore, the Commission finds, as proposed by Staff and supported by OHA, the Companies should refile their net metering tariffs to be consistent with the requirements adopted by the Commission in the 06-653 Case or with the Companies' next base rate proceeding.

G. <u>Green Pricing and Renewable Energy Credit Purchase Programs</u>

OCEA proposes that the Commission order AEP-Ohio to continue, with the input of the DSM collaborative, the Companies' Green Pricing Program and to require the Companies to develop a separate residential and small commercial net-metering customer renewable energy credit (REC) purchase program. OCC witness Gonzalez recommended a market-based pricing for RECs. On brief, OCEA proposes an Ohio mandatory market-based rate for in-state solar electric application and a different rate for in-state wind and other renewable resources. OCEA asserts that the programs will assist customers with the cost of owning and using renewable energy and assist the Companies in meeting the renewable energy requirements (OCC Ex. 5 at 10-11; Tr. Vol. IV at 232-234; OCEA Br. at 97-98).

The Companies argue that, pursuant to the stipulation agreement approved by the Commission in Case No. 06-1153-EL-UNC,[35] the Green Pricing Program expired December 31, 2008. Further, the Companies note that the Commission approved the expiration of the Green Pricing Program by the Finding and Order issued in Case No. 08-1302-EL-ATA.[36] However, the Companies state that they intend to offer a new green tariff option during the ESP term (Cos. Ex. 3 at 13). Accordingly, the Companies request that the Commission OCEA's request to detail or adopt a new green tariff option at this time. In regards to OCEA's REC proposal, the Companies assert that the prescriptive pricing recommendation presented on brief is at odds with the testimony of OCC's witness. Further, the Companies note that OCC's witness acknowledged the administrative and cost-effective issues associated with the proposal. Thus, the Companies note that, as OCC's witness acknowledged, the proposal requires further study before being implemented.

While the Commission believes there is merit to green pricing and REC programs and, therefore, encourages the Companies to evaluate the feasibility and benefits to implementing such programs as soon as practicable , we decline to order the Companies to initiate such programs as part of this ESP proceeding, as it is not necessary that these optional requests be pursued by the Companies at this time. Accordingly, we find that it is unnecessary to modify AEP-Ohio's ESP to include any green pricing and REC programs, and we decline to do such modification at this time.

H. Gavin Scrubber Lease

The Companies note that in the Gavin Scrubber Case,[37] the Commission authorized OP to enter into a lease agreement with JMG Funding, L.P. (JMG) for a scrubber/solid waste disposal facilities (scrubber) at the Gavin Power Plant. Under the terms of the lease agreement, the agreement may not be cancelled for the initial 15-year term. After the initial 15-year period, under the Gavin lease agreement, OP has the option to renew or extend the lease for an additional 19 years. OP entered into the lease on January 25, 1995. Therefore, the initial lease period ends in 2010, and at that time, OP will have the option of renewing the Gavin scrubber lease for an additional 19 years, until 2029. On April 4, 2008, OP filed an application for authority to assume the obligations of JMG and restructure the financing for certain JMG obligations in the OP and JMG case.[38] In the OP and JMG case, the Commission approved OP's request subject to two conditions: OP must seek Commission approval to exercise the option to purchase the

35 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 06-1153-EL-UNC (May 2, 2007).

36 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 08-1302-EL-ATA (December 19, 2008).

37 *In re Ohio Power Company*, Case No. 93-793-EL-AIS, Opinion and Order (December 9, 1993).

38 *In re Ohio Power Company*, Case No. 08-498-EL-AIS, Finding and Order (June 4, 2008).

Gavin scrubbers or terminate the lease agreement; and OP must provide the Commission with details of how the company intends to incorporate the project into its ESP (Cos. Ex. 2-A at 56-58).

As part of the Companies' ESP application, OP requests authority to return to the Commission to recover any increased costs associated with the Gavin lease (Cos. Ex. 2-A at 56-58). The Companies state that a decision on the Gavin scrubber lease has not been made because the market value of the scrubbers and the analysis to determine the least cost option is not available at this time.

The Commission recognizes that additional information is necessary for the Companies to evaluate the options of the Gavin lease agreement and, to that end, we believe that AEP-Ohio should be permitted to file an application to request recognition of the Gavin lease at the time that it makes its decision as to purchasing or terminating the lease. Once the Companies have made their election, they should conduct a cost-benefit analysis and file it with the Commission prior to seeking recovery of any incremental costs associated with the Gavin scrubber lease.

I. <u>Section V.E (Interim Plan)</u>

The Companies assert that this provision is part of the total ESP package and should be adopted. The Companies requested that the Commission authorize a rider to collect the difference between the ESP approved rates and the rates under the Companies' current SSO for the length of time between the end of the December 2008 billing month and the effective date of the new ESP rates.

We find Section I.E of the proposed ESP to be moot with this opinion and order. The Commission issued finding and orders on December 19, 2008, and February 25, 2009, interpreting the statutory provision in Section 4928.14(C)(1), Revised Code, and approving rates for an interim period until such time as the Commission issues its order on AEP's proposed ESP.[39] Those rates have been in effect with the first billing cycle in January 2009. Consistent with Section 4928.141, Revised Code, which requires an electric utility to provide consumers, beginning on January 1, 2009, a SSO established in accordance with Section 4928.142 or 4928.143, Revised Code, and given that AEP-Ohio's proposed ESP term begins on January 1, 2009, and continues through December 31, 2011, we are authorizing the approval of AEP's ESP, as modified herein, effective January 1, 2009. However, any revenues collected from customers during the interim period must be recognized and offset by the new rates and charges approved by this opinion and order.

---

39 *In re Columbus Southern Power Company and Ohio Power Company*, Case No. 08-1302-EL-ATA, Finding and Order at 2-3 (December 19, 2008) and Finding and Order at 2 (February 25, 2009).

VII. SIGNIFICANTLY EXCESSIVE EARNINGS TEST (SEET)

Section 4928.143(F), Revised Code, requires that, at the end of each year of the ESP, the Commission shall consider if any adjustments provided for in the ESP:

> ...resulted in excessive earnings as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate.

AEP-Ohio's proposed ESP SEET process may be summarized as follows: The book measure of earnings for CSP and OP is determined by calculating net income divided by beginning book equity. The Companies then propose that the ROE for CSP and OP should be blended as the book equity amounts for AEP-Ohio is more meaningful since CSP and OP are supported by AEP Corporation. To develop a comparable risk peer group, including public utilities, with similar business and financial risk, AEP-Ohio's process includes evaluating all publicly traded U.S. firms. By using data from both Value Line and Compustat, AEP-Ohio applies the standard decile portfolio technique, to divide the firms into 10 different business risk groups and 10 different financial risk groups (lowest to highest). AEP-Ohio would then select the cell which includes AEP Corporation. To account for the fact that the business and financial risks of CSP and OP may differ from AEP Corporation, this aspect of the process is repeated for CSP and OP and taken into consideration in determining whether CSP's or OP's ROEs are excessive. The ESP evaluates business risk by using unlevered Capital Asset Pricing Model betas (or asset betas) and the financial risk by evaluating the book equity ratio. The Companies assert that the book equity ratio is more stable from year to year and, therefore, is considered by fixed-income investors and credit rating agencies. The ESP utilized two standard deviations (which is equivalent to the traditional 95 percent confidence level) about the mean ROEs of the comparable risk peer group and the utility peer group to determine the starting point for which CSP's or OP's ROE may be considered excessive (Cos. Ex. 5 at 13-42). Finally, AEP-Ohio advocates that the earnings for each year the SEET is applied should be adjusted to exclude the margins associated with OSS and accounting earnings for fuel adjustment clause deferrals for which the Companies will not have collected revenues (Cos. Ex. 2-A at 37-38; Cos. Ex. 6 at 16-17; Cos. Ex. 2 at 39-40).

OCC, OEG, and the Commercial Group each take issue with the development of the comparable firms and the threshold of significantly excessive earnings. Kroger and OCEA argue that the Companies' statistical process for determining when CSP and OP have earned significantly excessive earnings improperly shifts the burden of proof set forth in the statute from the company to other parties.

OCC witness Woolridge developed a proxy group of electric utilities to establish the business and financial risk indicators, then uses Value Line to develop a data base of companies with business and financial risk indicators within the range of the electric utility proxy group. Woolridge suggests computing the benchmark ROE for the comparable companies and adjusting the benchmark ROE for the capital structure of Ohio's electric utility companies and adjusting the benchmark by the FERC 150 basis points ROE adder to determine significantly excessive earnings (OCC Ex. 2 at 5-6, 20). AEP-Ohio argues that OCC's process is contrary to the language and spirit of Section 4928.143(F), Revised Code, as the statute requires the comparable firms include non-utility firms. The SEET proposed by OCC witness Woolridge results in the same comparable list of firms for each Ohio electric utility evaluated (Cos. Ex. 5-A at 5-6).

OEG proposes a method to establish the comparable group of firms by utilizing the entire list of publicly traded electric utilities in Value Line's Datafile,[40] and one group of non-utility firms. The comparable non-utility group is composed of Companies' with gross plant to revenue between 1.2 and 5.0, gross plant in excess of $1 billion and companies for which Value Line has a beta (OEG Ex. 4 at 4-6). OEG then calculates the difference in the average beta of electric utility group and the non-utility group and adjust it by the average historical risk premium for the period 1926 to 2008, which equals 7.0 percent to determine the adjustment to account for the reduced risk associated with utilities. Thus, for example, for the year 2007 OEG determined that the average non-utility earned return of 14.14 percent yields a risk-adjusted return of 12.82 percent. OEG then applies an adjustment to recognize the financial risk differences of AEP-Ohio to the utility and non-utility comparison groups. Finally, to determine the level at which earnings are "significantly excessive," OEG suggests an adder of the 200 basis points to encourage investments (OEG Ex. 4 at 7-9). OEG argues that the use of statistical confidence ranges as proposed by AEP-Ohio would severely limit any finding of excessive earnings as a two-tailed 95 percent confidence interval would mean that only 2.5 percent of all observations of all the sample company groups would be deemed to have excessive earnings. Further, OEG argues that as a statistical analysis the AEP-Ohio-proposed method eliminates most, if not all, of the Commission's flexibility to adjust to economic circumstances and determine whether the utility company's earnings are significantly excessive (OEG Ex. 4 at 9-10).

AEP-Ohio contends that OEG's SEET method fails to comply with the statutory requirements for the SEET, fails to control for financial risk of the comparable sample groups, fails to account for business risk and will, like the process proposed by OCC,

---

40 OEG would eliminate one company with a significant negative return on equity for 2007.

produce the same comparable non-utility and utility group for each of the Ohio electric utilities (Cos. Ex. 5-A at 8-9).

The Commercial Group asserts that AEP-Ohio's proposed SEET methodology will produce volatile earned return on equity thresholds and, therefore, does not meet the primary objective of an ESP which is to stabilize rates and support the economic development of the state. Further, AEP-Ohio's SEET method, according to the Commercial Group, fails to compose a comparable proxy group with business risk similar to CSP and OP, including unregulated nuclear subsidiaries and deregulated generation subsidiaries. Thus, Commercial Group recommends a comparable group consist of publicly traded regulated utility companies as determined by the Edison Electric Institute (EEI). Commercial Group witness Gorman notes that using EEI's designated group of regulated entities and Value Lines earned return on common equity shows that the regulated companies had an average return on equity of approximately 9 percent for the period 2005 through 2008. Witness Gorman contends that over the period 2005 through 2008 and projected over the next 3 to 5 years, approximately 85 percent of the earned return on equity observations for the designated regulated electric utility companies will be at 12.5 percent return on equity or less. Therefore, Commercial Group recommends that the SEET test be based on the Commission-approved return on equity plus a spread of 200 basis points. Commercial Group witness Gorman reasons that the average risk, extreme risk and beta spread over AEP-Ohio's proxy group suggest that a 2 percent/200 basis points is a conservative determination of the excessive earnings threshold (Commercial Group Ex. 1 at 3, 12-17).

AEP-Ohio argues that the Commercial Group's proposed SEET fails to develop a comparable group as required by the SEET and ignores the fact that the rate of return is a forward-looking analysis and the SEET is retrospective. Thus, AEP-Ohio concludes that this method does not address the measurement of financial and business risk (Cos. Ex. 5-A at 9-10).

OCC opposes the exclusion of accounting earnings for fuel adjustment clause deferrals and the deduction of revenues associated withOSS, as OSS are not one-time write-offs or non-recurring items (OCC Ex. 2 at 21). OCC contends that revenues associated with the deferrals are reported during the same period with the Companies fuel-related expenses and to eliminate the deferrals, as AEP-Ohio proposes, would reduce the revenues for the period without deducting for the underlying expense (OCC Reply Br. 69-70). Similarly, Kroger proposes that AEP-Ohio credit the fuel adjustment clause for the margin generated by OSS and notes that AEP Corporation's West Virginia and Virginia electric distribution subsidiaries currently do so despite AEP-Ohio's assertion that such is in violation of federal law (Kroger Ex. 1 at 9).

Staff advocates a single SEET methodology for all electric distribution utilities as to the selection of comparable firms and, further, proposes a workshop or technical conference to develop the process to determine the "comparable group earnings" for the SEET. Staff witness Cahaan reasons that the SEET proposed by AEP-Ohio as a technical, statistical analysis, if incorrectly formulated shifts the burden of proof from the company to the other parties. Staff also contends that the Companies' SEET proposal is based upon a definition of significance which would create internal inconsistencies if applied to the statute. Further, Staff believes the "zone of reasonable" earnings can be framed by a return on equity with an adder in the range of 200 to 400 basis points. Further, Staff recognizes that if, as AEP-Ohio suggests, revenues from OSS are excluded from SEET, other adjustments would be required. Staff believes it would be unreasonable to predetermine those other adjustments as this time. Thus, Staff proposes that this proceeding determine the method of establishing the comparable group and specify the basis points that will be used to determine "significantly excessive earnings." Staff claims that under its proposed process, at the end of the year, the ROE of the comparable group could be compared to the electric utility's 10-K or FERC-1 and, if the electric utility's ROE is less than that of the sum of the comparable group's ROE plus the adder, it will be presumed that the electric utility's earnings were not significantly excessive. Further, Staff asserts that any party that wishes to challenge the presumption would be required to demonstrate otherwise. If, however, the electric utility's earned ROE is greater than the average of the comparable group plus the adder, the electric utility would be required to demonstrate that its earnings are not significantly excessive (Staff Ex. 10 at 8, 16, 19, 21-24, 26-27; Staff Br. at 27).

OCEA, OMA, and the Commercial Group recommend that the comparable firm process for the SEET be determined, as Staff proposes, as part of a workshop (OCEA Br. at 110; OMA Br. at 13; Commercial Group Br. at 9).

The Commission believes that the determination of the appropriate methodology for the SEET is extremely important. As evidenced by the extensive testimony in this case concerning the test, there are many different views concerning what is intended by the statute and what methodology should be utilized. However, as pointed out by several parties, whatever the ultimate determination of what the methodology should be for the test, the test itself will not be actually applied until 2010 and, as proposed by the Companies, will not commence until August 2010, after Compustat information is made publicly available (Cos. Ex. 5 at 11-12). Therefore, consistent with our opinion and order issued in the FirstEnergy ESP Case,[41] the Commission agrees with Staff that it would be wise to examine the methodology for the excessive earnings test set forth in the statute within the framework of a workshop. This is consistent with the Commission's finding that the goal of the workshop will be for Staff to develop a common methodology for the

41 *In re Ohio Edison Company, The Cleveland Electric Illuminating Company, and the Toledo Edison Company,* Case No. 08-935-EL-SSO, Opinion and Order (December 19, 2008).

excessive earnings test that should be adopted for all of the electric utilities and then for Staff to report back to the Commission on its findings. Despite AEP-Ohio's assertions that FirstEnergy's ESP is no longer applicable since the FirstEnergy companies rejected the modified ESP, the Commission finds that a common methodology for significantly excessive earnings continues to be appropriate given that other ESP applications are currently pending and, even under AEP-Ohio's ESP application, the SEET information is not available until the July of the following year. Accordingly, the Commission finds that Staff should convene a workshop consistent with this determination. However, notwithstanding the Commission's conclusion that a workshop process is the method by which the SEET will be developed, we recognize that AEP-Ohio must evaluate and determine whether to accept the ESP as modified herein or reject the modified ESP and, therefore, require clarification of our decision as to OSS and deferrals (Cos. Reply Br. at 134). We find that a determination of the Companies' earnings as "significantly excessive" in accordance with Section 4928.143(F), Revised Code, necessarily excludes OSS and deferrals, as well as the related expenses associated with the deferrals, consistent with our decision regarding an offset to fuel costs for any OSS margins in Section III.A.1.b of this order. The Commission believes that deferrals should not have an impact on the SEET until the revenues associated with deferrals are received. Further, although we conclude that it is appropriate to exclude off-system sales from the SEET calculation, we do not wish to discourage the efficient use of OP's generation facilities and, to the extent that the Companies' earnings result from wholesale sources, they should not be considered in the SEET calculation.

VIII. MRO V. ESP

The Companies argue that "[t]he public interest is served if the ESP is more favorable in the aggregate than the expected results of an MRO" (Cos. Br. at 15). The Companies' further argue that the state policy set forth in Section 4928.02(A), Revised Code, is satisfied if the price for electric service, as part of the ESP as a whole, is more favorable than the expected results of an MRO (Id.). The Companies aver that not only is the SSO proposed under the ESP more attractive than the SSO resulting froman MRO, other non-SSO factors exist adding to the favorability of the ESP over the MRO (Cos. Ex. 2-A at 4, 8; Cos. Ex. 3 at 14-19). Specifically, AEP calculated the market price competitive benchmark for the expected cost of electricity supply for retail electric generation SSO customers in the Companies' service territories for the next three years as $88.15 per MWH for CSP and $85.32 per MWH for OP for full requirements service (Cos. Ex. 2-A at 5). These competitive benchmark prices were calculated by AEP using market data from the first five days of each of the first three quarters of 2008, and averaging the data (Id. at 15).

AEP-Ohio witness Baker then compared the ESP-based SSO with the MRO-based SSO, analyzing the following components: market prices for 2009 through 2011; the phase-in of the MRO over a period of time pursuant to Section 4928.142, Revised Code, at 10 percent, 20 percent, and 30 percent; the full requirements pricing components of the states of Delaware and Maryland; PJM costs; incremental environmental costs, POLR costs, and other non-market portions of an MRO-based SSO (Cos. Ex. 2-A at 3-17). AEP-Ohio witness Baker also considered non-SSO costs in the comparison, such as the distribution-related costs of $150 million for CSP and $133 million for OP (Id. at 16-17). AEP-Ohio concluded that the cost of the ESP is $1.2 billion and the cost of the MRO is $1.5 billion for CSP, while the cost of the ESP is $1.4 billion and the cost of the MRO is $1.7 billion for OP (Cos. Ex. 2-B, Revised Exhibit JCB-2). Therefore, AEP-Ohio states that the ESP for the Companies in the aggregate and for each individual company is clearly more favorable for customers, and would result in a net benefit to the customers under the ESP as compared to the MRO of $ 292 million for CSP and $262 million for OP (Id.; Cos. Br. at 135).

The Companies state that, in addition to the generation component, the ESP has other elements that, when taken in the aggregate, make the ESP considerably more favorable to customers than an MRO alternative (Cos. Ex. 2-A at 17-18). AEP-Ohio explains that the benefits in the ESP that are not available in an MRO, include: a shareholder-funded commitment focused on economic development and low-income customer assistance programs; price certainty and stability for generation service for a specified three-year period; and gridSMART and enhanced distribution reliability initiatives (Cos. Ex. 2-A at 17-18; Cos. Ex. 3 at 16-18; Cos. Br. at 135-137).

The Companies contend that once the Commission determines that the ESP is more favorable in the aggregate, then the Commission is required to approve the ESP. If the Commission determines that the ESP is not more favorable in the aggregate, then the Commission may modify the ESP to make it more favorable or it may disapprove the ESP application.

Staff states that, as a general principle, Staff believes that the Companies' proposed ESP is more favorable than what would be expected under an MRO (Staff Br. at 2). However, Staff explains that modifications to the proposed ESP are necessary to make the ESP reasonable (Id.). With Staff's proposed adjustments to the ESP rates, Staff witness Hess testified that the Companies' proposed ESP "results in very reasonable rates" (Staff Ex. 1 at 10). Furthermore, Staff witness Hess demonstrated, utilizing Staff witness Johnson's estimated market rates, that the ESP is more favorable in the aggregate as compared to the expected results of an MRO (Staff Ex. 1-A, Revised Exhibit JEH-1; Staff Br. at 26).

Several intervenors are critical of various components of AEP-Ohio's proposed ESP and thus conclude that the ESP, as proposed, is not more favorable in the aggregate and should be rejected or substantially modified, or that AEP-Ohio has failed to meet its burden of proof under the statute that the proposed ESP, in the aggregate, is more favorable than an MRO (OPAE Br. at 3, 22-23; OMA Br. at 3; Kroger Br. at 4; OHA Br. at 11; Commercial Group Br. at 2-3; OEG Br. at 2-3; Constellation Br. at 16-18). More specifically, OHA contends that the Commission must take into account all terms and conditions of the proposed ESP, not just pricing (OHA Br. at 8-9). OHA further explains that the Commission must weigh the totality of the circumstances presented in the proposed ESP with the totality of the expected results of an MRO (Id. at 9). OHA also states that the proposed ESP fails to mitigate the harmful effects of new regulatory assets, proposed deferrals, and rate increases on hospitals and, therefore, the ESP does not provide benefits that make it more favorable than a simple MRO (Id. at 11). IEU asserts that both the Companies' and Staff's comparison of the ESP to an MRO are flawed because the comparisons fail to reflect the projected costs of deferrals, assume the maximum blending percentages allowed under 4928.142, Revised Code, and fail to demonstrate the incremental effects of the maximum blending percentages on the FAC costs (IEU Br. at 33, citing Cos. Ex. 2-A, Staff Ex. 1, Exhibit JEH-1, Tr. Vol. XI at 78-82, and Tr. Vol. XIII at 87-88).

OCEA disputes the Companies' comparison of the ESP to the MRO, stating that the Companies have overstated the competitive benchmark prices (OCC Ex. 10 at 15; OCEA Br. at 19-24). Based on data from the fourth quarter 2008, and taking in consideration adjustments for load shaping and distribution losses, OCC calculates that the updated competitive benchmark prices should be $73.94 for CSP and $71.07 for OP (OCC Ex. 10 at 15-24). OCEA also questioned other underlying components of AEP witness Baker's comparison of the MRO to the ESP regarding the proposed ESP, as well as the exclusion of certain costs in the MRO calculation (Id. at 37-40). Nonetheless, OCEA ultimately concludes that AEP's ESP, if appropriately modified, is more favorable than an MRO (OCEA Br. at 19-24; OCC Ex. 10 at 39). Constellation also submits that the forward market prices for energy have fallen significantly since the Companies' filed their application and submitted their supporting testimony (Constellation Ex. 2 at 16).

Contrary to the position taken by Constellation and OCEA,[42] AEP-Ohio contends that the market price analysis supplied in support of the ESP does not need to be updated in order for the Commission to determine whether the ESP is more favorable that the expected result of the MRO. Furthermore, AEP-Ohio responds that the appropriate method is to look over a longer period of time, and not just focus on the recent decline in forward market prices. (Cos. Reply Br. at 130-131).

Contrary to arguments raised by various intervenors, AEP-Ohio avers that the legal standard to approve the ESP is not whether the Commission can make the ESP even more favorable, whether the rates are just and reasonable, whether the costs are prudently

42 Constellation Br. at 17; OCEA Br. at 19-24.

incurred, whether the plan provisions are cost-based, or whether each provision of the plan is more favorable than an MRO (Cos. Reply Br. at 1-6). The Companies contend that the Commission only has authority to modify a proposed ESP if the Commission determines that the ESP is not more favorable than the expected results of an MRO (Id. at 4). As some intervenors have recognized,[43] the Commission does not agree that our authority to make modifications is limited to an after-the-fact determination of whether the proposed ESP is more favorable in the aggregate. Rather, the Commission finds that our statutory authority includes the authority to make modifications supported by the evidence in the record in this case. Based upon our opinion and order and using Staff witness Hess' methodology of the quantification of the ESP v. MRO comparison, as modified herein, we believe that the cost of the ESP is $673 million for CSP and $747 million for OP, and the cost of the MRO is $1.3 billion for CSP and $1.6 billion for OP.

Accordingly, upon consideration of the application in this case and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

IX. CONCLUSION

The Commission believes that it is essential that the plan we approve be one that provides rate stability for the Companies, provides future revenue certainty for the Companies, and affords rate predictability for the customers. Upon consideration of the application in this case and the provisions of Section 4928.143(C)(1), Revised Code, the Commission finds that the ESP, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, as modified by this order, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code. Therefore, the Commission finds that the proposed three-year ESP should be approved with the modifications set forth in this order. To the extent that intervenors have proposed modifications to the Companies' ESP that have not been addressed by this opinion and order, the Commission concludes that the requests for such modifications are denied.

Furthermore, the Commission finds that the Companies' should file revised tariffs consistent with this order, to be effective with bills rendered January 1, 2009. In light of the timing of the effective date of the tariffs, the Commission finds that the revised tariffs shall be approved upon filing, effective January 1, 2009, as set forth herein, and contingent upon final review by the Commission.

---

43 OEG Br. at 3.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, the companies are subject to the jurisdiction of this Commission.

(2) On July 31, 2008, CSP and OP filed applications for an SSO in accordance with Section 4928.141, Revised Code.

(3) On August 19, 2008, a technical conference was held regarding AEP-Ohio's applications and on November 10, 2008, a prehearing conference was held in these matters.

(4) On September 19, 2008, and October 29, 2008, intervention was granted to: OEG; OCC; Kroger; OEC; IEU-Ohio; OPAE; APAC; OHA; Constellation; Dominion; NRDC; Sierra; NEMA; Integrys; Direct Energy; OMA; OFBF; Wind Energy; OASBO/OSBA/BASA; Ormet; Consumer Powerline; Morgan Stanley Capital Group Inc.; Commercial Group; EnerNoc, Inc.; and AICUO.

(5) The hearing in these proceedings commenced on November 17, 2008, and concluded on December 10, 2008. Eleven witnesses testified on behalf of AEP-Ohio, 22 witnesses testified on behalf of various intervenors, and 10 witnesses testified on behalf of the Commission Staff.

(6) Five local hearings were held in these matters at which a total of 124 witnesses testified.

(7) Briefs and reply briefs were filed on December 30, 2008, and January 14, 2009, respectively.

(8) AEP-Ohio's applications were filed pursuant to Section 4928.143, Revised Code, which authorizes the electric utilities to file an ESP as their SSO.

(9) The proposed ESP, as modified by this opinion and order, including its pricing and all other terms and conditions, including deferrals and future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code.

ORDER:

It is, therefore,

ORDERED, That the Companies' application for approval of an ESP, pursuant to Sections 4928.141 and 4928.143, Revised Code, be modified and approved, to the extent set forth herein. It is, further,

ORDERED, That the Companies file their revised tariffs consistent with this opinion and order and that the revised tariffs be approved effective January 1, 2009, on a bills-rendered basis, contingent upon final review and approval by the Commission. It is further,

ORDERED, That each company is authorized to file in final form four complete, printed copies of its tariffs consistent with this opinion and order, and to cancel and withdraw its superseded tariffs. The Companies shall file one copy in this case docket and one copy in each Company's TRF docket (or may make such filing electronically, as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to Staff. It is, further,

ORDERED, That the Companies notify all affected customers of the changes to the tariff via bill message or bill insert within 45 days of the effective date of the tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further, ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

KWB/GNS:vrm/ct

Entered in the Journal
MAR 1 8 2009

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating Assets.	)	Case No. 08-917-EL-SSO
In the Matter of the Application of Ohio Power Company for Approval of its Electric Security Plan; and an Amendment to its Corporate Separation Plan.	)	Case No. 08-918-EL-SSO

CONCURRING OPINION OF CHAIRMAN ALAN R. SCHRIBER

AND COMMISSIONER PAUL A. CENTOLELLA

We agree with the Commission's decision and write this concurring opinion to express additional rationales supporting the Commission's decision in two areas.

gridSMART Rider

The Order sets the initial amount to be recovered through the gridSMART rider based on the availability of federal matching funds for smart grid demonstrations and deployments under the American Recovery and Reinvestment Act of 2009. AEP-Ohio should promptly take the necessary steps to apply for available federal funding. Additionally, AEP-Ohio should work with staff and the collaborative established under the Order to refine its Phase 1 plan and initiate deployments in a timely and reasonable manner.

The foundation of a smart grid is an open-architecture communications system which, first, provides a common platform for implementing distribution automation, advanced metering, time-differentiated and dynamic pricing, home area networks, and other applications and, second, integrates these applications with existing systems to improve reliability, reduce costs, and enable consumers to better control their electric bills.

These capabilities can provide significant consumer and societal benefits. In the near term, participating consumers will have new capabilities for managing their energy usage to take advantage of lower power costs and reduce their electric bills. AEP-Ohio will be able to provide consumers feedback regarding their electric usage patterns and improved customer service. And, the combination of distribution automation and advanced metering should enable AEP-Ohio to rapidly locate damaged and degraded

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbus Southern Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration.	)	Case No. 09-1089-EL-POR
In the Matter of the Application of Ohio Power Company for Approval of its Program Portfolio Plan and Request for Expedited Consideration.	)	Case No. 09-1090-EL-POR

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), coming now to consider the above-entitled matter, having appointed attorney examiners to conduct the hearing, having reviewed the exhibits introduced into evidence in this matter, and being otherwise fully advised, hereby issues its opinion and order in this case.

APPEARANCES:

Steven T. Nourse and Matthew J. Satterwhite, American Electric Power Service Corporation, One Riverside Plaza, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

McNees, Wallace and Nurick, LLC, by Lisa G. McAlister, Joseph Clark, and Samuel C. Randazzo, Fifth Third Center, Suite 1700, 21 East State Street, Columbus, Ohio 43215-4228, on behalf of Industrial Energy Users-Ohio.

Janine L. Migden-Ostrander, the Office of the Ohio Consumers' Counsel, by Terry L. Etter and Christopher J. Allwein, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Columbus Southern Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

David C. Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839-1793, on behalf of Ohio Partners for Affordable Energy.

OPINION:

I. HISTORY OF PROCEEDINGS

On November 12, 2009, Columbus Southern Power Company (CSP) and Ohio Power Company (OP) (collectively, AEP-Ohio or the Companies) filed an application (application) in the above-captioned matter for approval of the Companies' energy efficiency and peak demand reduction (EE/PDR) program portfolio plans for 2010 through 2012, pursuant to Rule 4901:1-39-04, Ohio Administrative Code (O.A.C.). CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission. Along with the application, AEP-Ohio also filed a Stipulation and Recommendation (Stipulation), signed by the Office of the Ohio Consumers' Counsel (OCC), the Ohio Manufacturers' Association (OMA), the Ohio Environmental Council (OEC), Ohio Partners for Affordable Energy (OPAE), the Sierra Club of Ohio (Sierra), the Natural Resources Defense Council (NRDC), the Ohio Energy Group (OEG), the Ohio Poverty Law Center (OPLC), Ohio Hospital Association (OHA), and the Companies, addressing all of the issues raised in the application. AEP-Ohio also filed the direct testimony of Jon F. Williams (Cos. Ex. 1) and the direct testimony of David M. Roush (Cos. Ex. 2) in support of its application and the Stipulation (Joint Ex. 1) on November 12, 2009. By letter filed December 10, 2009, Ormet Primary Aluminum Corporation (Ormet) requested that it be included as a signatory party to the Stipulation.

IEU-Ohio filed objections and recommendations to AEP-Ohio's application on December 11, 2009, to which AEP-Ohio filed a response on December 23, 2009. IEU-Ohio filed a reply on December 30, 2009.

Motions to intervene were filed by Ormet, IEU-Ohio, OPAE, Sierra Club, OEG, OHA, OMA, OEC, OCC, and NRDC. By entry issued January 21, 2010, the above-listed motions to intervene were granted. The January 21, 2010 entry also admitted Clinton A. Vince, Douglas G. Bonner, Emma F. Hand, and David C. Rinebolt to practice *pro hac vice* before the Commission in this matter. Further, the January 21, 2010 entry directed that all motions to intervene and all intervenor testimony were due by February 11, 2010, and scheduled the evidentiary hearing to commence on February 25, 2010, at the offices of the Commission. On February 25, 2010, AEP-Ohio filed its proofs of publication (Cos. Ex. 3; Tr. at 6).

On January 15, 2010, EnerNOC, Inc. (EnerNOC) filed a motion to intervene in this proceeding. EnerNOC's request for intervention was granted from the bench during the hearing (Tr. at 12). In accordance with the procedural schedule, IEU-Ohio filed the direct testimony of Kevin M. Murray (IEU-Ohio Ex. 1) on February 11, 2010. The hearing was held, as scheduled, on February 25, 2010. Initial briefs were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC, OEC, Sierra, and NRDC, on March 10, 2010. Reply briefs were filed by AEP-Ohio and IEU-Ohio on March 19, 2010.

II. APPLICABLE LAW

Section 4928.66(A)(1), Revised Code, provides, in pertinent part:

> (a) Beginning in 2009, an electric distribution utility shall implement energy efficiency programs that achieve energy savings equivalent to at least three-tenths of one per cent of the total, annual average, and normalized kilowatt-hour sales of the electric distribution utility during the preceding three calendar years to customers in this state. The savings requirement, using such a three-year average, shall increase to an additional five-tenths of one per cent in 2010, seven-tenths of one per cent in 2011, eight-tenths of one per cent in 2012, nine-tenths of one per cent in 2013, one per cent from 2014 to 2018, and two per cent each year thereafter, achieving a cumulative, annual energy savings in excess of twenty-two per cent by the end of 2025.
>
> (b) Beginning in 2009, an electric distribution utility shall implement peak demand reduction programs designed to achieve a one per cent reduction in peak demand in 2009 and an additional seventy-five hundredths of one per cent reduction each year through 2018. In 2018, the standing committees in the house of representatives and the senate primarily dealing with energy issues shall make recommendations to the general assembly regarding future peak demand reduction targets.

Further, in accordance with Section 4928.66, Revised Code, the Commission adopted rules in Chapter 4901:1-39, O.A.C., Energy Efficiency and Demand Reduction Benchmarks, which became effective December 10, 2009.

III. AEP-OHIO'S APPLICATION

In its brief, AEP-Ohio explains that the Commission established the energy efficiency and peak demand reduction (EE/PDR) riders in the Companies' electric security plan (ESP) cases, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO (ESP case), and set the riders at zero.[1] In their application, the Companies request approval to commence recovery of deferred program costs incurred prior to the Commission's decision in the ESP cases. The initial EE/PDR rider rates were to commence with the first billing cycle in January 2010. AEP-Ohio also requests approval to recover, in the EE/PDR Riders, projected program costs through June 30, 2010, net lost distribution revenues, and shared savings. The EE/PDR rider rates are subject to an annual true-up and reconciliation.

AEP-Ohio emphasizes that as part of the Stipulation, the Companies have agreed to report to the collaborative, on a quarterly basis, program costs, EE/PDR impacts, progress on achievement of the goals, and incentives and administrative costs. AEP-Ohio also notes that pursuant to the Stipulation, the Companies agreed to file and request approval of their Renewal Energy Technology (RET) programs and that on November 30, 2009, AEP-Ohio initiated Case Nos. 09-1871-EL-ACP and 09-1872-EL-ACP, in accordance with the provisions of the Stipulation. The Companies describe the two proposed RET programs, an incentive-based renewable energy credit (REC) program and a REC purchase program. The REC would be applied to AEP-Ohio's alternative energy compliance requirements. AEP-Ohio requests that cost recovery occur through the fuel adjustment clause (FAC) approved in the Companies' ESP cases. AEP-Ohio witness Williams admits that, while the RET program has EE/PDR benefits, the program does not meet the requirements of the Total Resource Cost (TRC) test and is not cost effective as an energy efficiency resource. For this reason, the Signatory Parties to the Stipulation agreed that the RET programs should be part of a separate Commission filing; however, the Signatory Parties agreed that these programs are more appropriately REC-based alternative energy compliance programs, with recovery through the FAC. Further, the Stipulation provides for recovery of prudently incurred costs and REC incentive payments through the FAC[2] (Cos. Br. at 1-2; Cos. Ex. 1 at 27-28).

AEP-Ohio states that its witness, Jon Williams, presented testimony in support of the Companies' Action Plan, the Stipulation, and supporting documentation based on personal knowledge and expertise. Mr. Williams testified that a market potential study was conducted by Summit Blue for AEP-Ohio, and AEP-Ohio secured the services of Midwest Energy Efficiency Alliance (MEEA). Using the collaborative process and the results of the market potential study, a three-year EE/PDR Action Plan was developed. AEP-Ohio projects the expenditures for the EE/PDR Action Plan to be approximately $161.9 million in incremental cost for the years 2009 through 2011 (Cos. Ex. 1 at 7, 9-11). AEP-Ohio argues that Mr. Williams demonstrated how the Companies' EE/PDR Action Plan complies with Rule 4901:1-39-04, O.A.C. (Cos. Ex. 1 at 18-19). AEP-Ohio notes that, as of the time that the instant application was filed, the Commission had not finalized

---

1 *In re AEP-Ohio ESP cases*, Case Nos. 08-917-EL-SSO and 08-918-EL-SSO, Opinion and Order at 41-47 (March 18, 2009); Entry on Rehearing at 27-28, 31 (July 23, 2009) (First ESP EOR); and Second Entry on Rehearing (November 4, 2009) (Second ESP EOR).

2 See the discussion of the Stipulation in part IV of this Order at Section B.4.

protocols for the evaluation, measurement, and verification (EM&V) of EE/PDR measures (Cos. Ex. 1 at 20).[3] The Companies state that Summit Blue is an experienced EM&V contractor, which, along with MEEA, and input from collaborative participants, has prepared an evaluation process for the Companies' Action Plan (Cos. Ex. 1 at 20). Mr. Williams testified that although AEP-Ohio plans to hire an EM&V contractor to refine its process and provide validated data for compliance reporting, the Companies will work with the EM&V consultant selected by the Commission.[4]

According to AEP-Ohio witness Williams, the EE/PDR Action Plan includes a benefit-cost analysis for each program using the TRC test to evaluate cost-effectiveness (Cos. Ex. 1 at 16).

AEP-Ohio states that the Companies initiated implementation of their EE/PDR programs in May 2009, and six programs are currently in operation. For the majority of the portfolio programs, the Companies are contracting with select qualified third parties through a competitive bidding process to implement turn-key portfolio services. However, in the case of the Custom and Self-Direct Business Programs, AEP-Ohio may utilize internal resources to perform a portion of the necessary program promotion and implementation. As part of the Stipulation, the Companies explain that they have agreed to permit OPAE to administer its Low-Income Weatherization program without competitive bid. The Companies have investigated other low-income program costs to achieve savings in other states and concluded that OPAE can administer the program for a lower average cost than indicated in the Companies' research. AEP-Ohio also asserts that OPAE, through its member agencies, has the ability to provide synergies with other funding sources to reduce costs, and because, based on AEP-Ohio's research, planned costs to achieve savings in low-income programs are significantly lower than the actual costs, AEP-Ohio anticipates OPAE may also be able to offset lower achievement in one program with higher achievement in other contracted programs, such as the Efficient Products Program, which delivers higher savings. Over the course of the three-year portfolio plan period, AEP-Ohio will review the performance of selected contractors, determine best practices, and evaluate cost effectiveness. Included as a part of the Portfolio Action Plan are programs for each class of customers. The Companies have already initiated six portfolio programs and their general energy efficiency education campaign, including: (1) appliance recycling; (2) energy efficient lighting; (3) lighting incentives and custom project incentives; (4) a process whereby mercantile customers can commit their completed EE/PDR resources and entitle the mercantile customer to an incentive or exemption from the EE/PDR rider; and (5) and (6) two pilot programs

[3] *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Finding and Order (October 15, 2009) (09-512).

[4] By entry issued March 17, 2010, in 09-512, ECONorthwest was selected as the independent evaluator of EE/PDR programs.

through the Companies' Partnership with Ohio Fund for energy efficiency kits (Cos. Ex. 1 at 21-25).

Further, AEP-Ohio witness Williams testified that the forecasted 2009 summer peak demand for both CSP and OP are more than one percent below their respective three-year adjusted baseline levels due primarily to the economic downturn and related reductions in AEP-Ohio's commercial and industrial load. For this reason, AEP-Ohio asserts that programs to curtail load during the summer of 2009 would not have served the public interest and were unnecessary. Further, the Companies argue that a reduction in the forecasted 2009 budget for PDR in the AEP-Ohio EE/PDR Action Plan is appropriate. The Companies note that this issue is addressed in a pending application before the Commission[5] (Cos. Ex. 1 at 26). AEP-Ohio also excluded $13.2 million from its EE/PDR Action Plan expenditures based on the expectation that capacity associated with existing and future contracts under the Companies' Schedule IRP-D (Interruptible Power-Discretionary) would be counted as part of the Companies' PDR compliance benchmarks. If the Commission determines otherwise, AEP-Ohio will need to make additional expenditures to meet its cumulative compliance benchmarks in 2010 and 2011 (Cos. Ex. 1 at 26-27).

IEU-Ohio witness Murray recommends that the Commission revise AEP-Ohio's portfolio plan. Mr. Murray contends that the costs of AEP-Ohio's proposed energy efficiency plans are relatively high in comparison to other electric utilities' similar energy efficiency plans, in terms of the expected reduction in kilowatt hours (kWh). Mr. Murray testified that he initiated his evaluation with a "high level analysis and then performed a targeted analysis on a few aspects" of AEP-Ohio's portfolio plan (IEU-Ohio Ex. 1 at 4-5). Mr. Murray compared AEP-Ohio's portfolio plan to that of Appalachian Power Company (APCo)[6] and to those of several electric utilities in Pennsylvania, as such plans were submitted to their respective state regulatory utility commissions. Mr. Murray noted that the same consulting firm and lead consultant on the AEP-Ohio portfolio plan (Cos. Ex. 1, Ex. JFW-2, Vol. 1) prepared the APCo portfolio plan (IEU-Ohio Ex. 1 at 7-8). Mr. Murray recognized that there are some differences in the energy efficiency requirements imposed by each state and in the two compliance plans; however, he generally concluded that the compliance portfolio plans are substantially similar and the overviews are identical (IEU-Ohio Ex. 1 at 8). Based on his analysis, Mr. Murray noted that the APCo plan is for five years, and that APCo's demand side management (DSM) Action Plan projects incremental

---

5 See *In the Matter of the Application of Columbus Southern Power Company for Approval of its Peak Demand Reduction Program Portfolio Plan and Request for Waiver and Request for Amendment of the 2009 Peak Demand Reduction Benchmark Pursuant to Section 4928.66(A)(2)(b), Revised Code*, and *In the Matter of the Application of Ohio Power Company for Approval of its Peak Demand Reduction Program Portfolio Plan and Request for Waiver and Request for Amendment of the 2009 Peak Demand Reduction Benchmark Pursuant to Section 4928.66(A)(2)(b), Revised Code*, respectively, Case Nos. 09-578-EL-EEC and 09-579-EL-EEC.

6 APCo is also a subsidiary of American Electric Power Corporation.

annual savings, as a percentage of total annual kWh sales, to reach 1.41 percent by 2013, with cumulative savings of 492.5 gigawatt-hours (GWh) or 492,500,000 kWh over this time period (2.8 percent cumulative). Mr. Murray compared these projects with the AEP-Ohio projects, which estimate an incremental annual savings as a percentage of total annual kWh sales, to reach 1.07 percent by 2011, with cumulative savings of 842.3 GWh or 842,300,000 kWh over the time period (1.65 percent cumulative) (IEU-Ohio Ex. 1 at 9; Cos. Ex. 1, JFW-2, Vol. 1, p. 10 of 163). Mr. Murray recognized that for the residential section, the APCo and AEP-Ohio DSM costs estimates were similar, at $0.014 per kWh for APCo and $0.015 per kWh for AEP-Ohio (IEU-Ohio Ex. 1 at 9). For the business sector, however, IEU-Ohio witness Murray calculated the overall lifetime cost of saved energy in 2009 dollars to be $0.007 per kWh for APCo and $0.014 per kWh for AEP-Ohio; AEP-Ohio's estimate is twice as much as APCo's figure (IEU-Ohio Ex. 1 at 9).

Mr. Murray also reviewed the cost of energy efficiency plans and the expected reduction in annual energy consumption for the Pennsylvania electric utilities, and compared it to AEP-Ohio estimates (IEU-Ohio Ex. 1, Ex. KMM-3). Based on Mr. Murray's analysis, the annual reduction in energy consumption by the Pennsylvania utilities through May 31, 2013, ranged from 3.1 percent to 4.07 percent, with TRC values ranging from 1.81 to 4.10, with an average TRC value of 2.64 (IEU-Ohio Ex. 1 at 12). Mr. Murray concluded that AEP-Ohio's plans, which have an annualized energy reduction of 842,300,000 kWh, a 1.65 percent reduction from its annual baseline, and a TRC value of 1.80, ultimately, on a relative basis, will cost more, but achieve less, than similar plans in Pennsylvania (IEU-Ohio Ex. 1 at 9).

Mr. Murray noted that the Stipulation indicates that CSP customers will experience an increase in their total electric bills in the range of 0.4 percent to 3.4 percent, and OP customers will experience an increase in the range of 0.4 percent to 4.0 percent. IEU-Ohio emphasizes that in addition to the total electric bill increase proposed in this proceeding, AEP-Ohio customers have experienced other increases in their total electric bills since January 2010 (IEU-Ohio Ex. 1 at 14-15).

Further, Mr. Murray testified that AEP-Ohio improperly included and the Stipulation improperly endorses the recovery of shared savings and lost distribution revenue. IEU-Ohio contends that AEP-Ohio failed to justify its request for lost distribution revenues and to justify its request for recovery of shared savings and lost distribution revenue (IEU-Ohio Ex. 1 at 15-16). IEU-Ohio argues that it is inappropriate to adjust rates outside of a rate case because the Commission's ability to evaluate other variables that affect the calculation of an electric utility's overall revenue requirement is limited. Further, IEU-Ohio reasons that a mechanism to recover lost distribution revenue reduces the electric utility's overall risk and, therefore, there should be a downward adjustment to the electric utility's authorized rate of return, contemporaneous with the introduction of the lost revenue recovery mechanism. IEU-Ohio argues that while there are circumstances where it could be appropriate for the Commission to adjust rates outside of a rate case, such as a significant decrease in sales, that is not the case in this instance with AEP-Ohio (IEU-Ohio Ex. 1 at 15-17).

Mr. Murray initially contended that AEP-Ohio significantly overstated the estimate for lost distribution revenues in the event that commercial and industrial customers reduce their energy usage because AEP-Ohio recovers most of its distribution revenue requirements from larger commercial and industrial customers through monthly customer charges and demand charges with ratchets (IEU-Ohio Ex. 1 at 17-18). However, on cross-examination, Mr. Murray revised his testimony to acknowledge that AEP-Ohio had, in fact, excluded commercial and industrial customer charges from its calculation (Tr. at 65).

Using the testimony of AEP-Ohio witness Roush, Mr. Murray calculated the average variable distribution revenues for commercial and industrial customers of CSP to be $.0094735 per kWh, in comparison to his own calculation of $0.000744 per kWh. Thus, Mr. Murray concluded that the estimated energy savings of 45,184,000 per kWh yields lost revenues of $428,051 ($.0094735 x 45,184,000 kWh) for CSP. According to Mr. Murray, AEP-Ohio calculated OP's annual average distribution revenues of $.0070259 per kWh. Mr. Murray, however, calculated annual average distribution revenues for OP to be $0.0004496 per kWh. Thus, Mr. Murray concluded that the estimated energy savings of $437,245 ($.0070259 x 61,995,000 kWh) for OP (IEU-Ohio Ex. 1 at 17-18). Based on his analysis, Mr. Murray concluded that AEP-Ohio is proposing to spend significantly higher amounts on EE/PDR programs than other electric utilities that are implementing similar plans in other states, and asserted that AEP's proposed arrangement will achieve less in terms of efficiency gains and peak demand reductions. In conjunction with Mr. Murray's testimony, IEU-Ohio requested that the Commission modify AEP-Ohio's portfolio plan.

Further, Mr. Murray testified that the portfolio plan fails to include lower cost compliance options, such as utilizing the demand response program of the regional transmission operator, which, in this case, is PJM Interconnection LLC (PJM) to count toward AEP-Ohio's EE/PDR compliance requirements in the event that the customer agrees to commit is capabilities to AEP-Ohio (IEU-Ohio Ex. 1 at 19-21). Mr. Murray estimates that utilizing the PJM demand response program could reduce AEP-Ohio's portfolio plan costs by approximately $7 million (IEU-Ohio Ex. 1 at 21). IEU-Ohio, however, supports AEP-Ohio's self-directed options for mercantile customer commitments (IEU-Ohio Ex. 1 at 22).

On the other hand, AEP-Ohio claims that the testimony provided by Mr. Murray is not that of an expert in demand side management, contains numerous errors, and overlooks that AEP-Ohio's statutory compliance obligations will continue to grow each year and that compliance costs will increase.

IV. STIPULATION

As previously noted, along with the application, AEP-Ohio filed a Stipulation, which was entered into by OCEA, OHA, OMA, OPAE, OEG, and AEP-Ohio (collectively, Signatory Parties). In the pertinent parts of the Stipulation, the Signatory Parties agree:

> **A. 2009-2011 Program Portfolio Plan Approval, Administration and General Education**
>
> 1. Program cost recovery should be granted in an expedited manner based on the three-year EE/PDR Action Plan filed in this case. The Signatory Parties submit that the EE/PDR Action Plan should be accepted and approved as supplemented and clarified by the terms of this Stipulation (the three-year EE/PDR Action Plan agreed to herein is referred to as the "Plan").
>
> 2. The Companies will offer transparent reporting of program costs, including EE/PDR impacts and progress toward goals, incentives and administrative costs, to the Collaborative on a quarterly basis.
>
> 3. Five million dollars of the $15 million in the General Education/Media/Training budget primarily targeted to general energy efficiency media advertising will be re-allocated to provide additional funding for cost-effective programs. Budget dollars currently allocated to training will not be re-allocated, absent Commission approval.
>
> 4. Based on the Signatory Parties' understanding of Section 4928.66, Revised Code, and the Commission's rules contained in Chapter 4901:1-39, O.A.C., the Signatory Parties believe that the contracted interruptible load associated with the Companies' existing tariff programs for interruptible service (IRP-D) will count toward the PDR benchmarks.[7] Accordingly, the Plan now reflects a reduction in funding for 2010 and 2011 of $13.2 million (approximately $8.2 million from OP and $5 million from CSP) based on that understanding. This helps reduce the Companies' EE/PDR compliance costs and the resulting impact on ratepayers. The Companies reserve the

7 OCC believes that only new interruptible load subscribed after the signing of SB 221 and meeting the latest rules contained in Chapter 4901:1-39, O.A.C., should count towards compliance.

right to adjust the Plan by restoring such funding if the above-stated interpretation is not confirmed by the Commission.

5. At the time the Stipulation was filed, the Commission rules adopted in Case No. 08-888-EL-ORD were not yet effective. Nonetheless, the Signatory Parties agreed that, with the exception of the portfolio plan template requirement (that is not yet completed), the Plan complies with the Commission's newly adopted rules.[8]

B. Renewable Energy Technology Program Approval

1. The Renewable Energy Technology (RET) program filed in the original EE/PDR Action Plan should not be included in the EE/PDR cost recovery rider.

2. The Companies will file in November 2009 an incentive-based REC program for solar photovoltaic and small wind resources to encourage residential and nonresidential customers to install renewable energy resource facilities on the customer premises, subject to Commission approval of design and cost recovery. The Companies will discuss the key features of their RET proposed program with Commission Staff, OPAE, and the OCEA Parties prior to filing. The Signatory Parties reserve their right to oppose any aspect of the Companies' proposal if it does not reflect their positions.

3. The Companies will file in November 2009 a solar photovoltaic and small wind REC purchase program for residential and non-residential customers with existing renewable energy resource facilities effective for 2010-2011, subject to Commission approval of design and cost recovery and agree to discuss the key features of their proposed RET program with Commission Staff, OPAE, and the OCEA Parties prior to filing. The Signatory Parties reserve their right to oppose any aspect of the Companies' proposal if it does not reflect their positions.

8 The rules adopted in *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-3, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Amended Substitute Senate Bill No. 221*, Case No. 08-888-EL-ORD (Green Rules), at Chapter 4901:1-39, O.A.C., were effective December 10, 2009. However, the portfolio plan template requirements pending before the Commission in Case No. 09-714-EL-UNC have not yet been adopted.

4. The Companies' RET programs will be REC-based and the Signatory Parties agree that prudently incurred RET program costs should be recovered through the Companies' fuel adjustment clauses. At least six months before the Companies file for a new standard service offer, a working group of interested Signatory Parties and Commission Staff will be formed to discuss whether the costs of renewable energy should be recovered in the fuel adjustment charge or in a separate bypassable surcharge.

C. 2009 Peak Demand Reduction Benchmark Amendment

1. The Companies have filed to adjust the 2009 peak demand reduction benchmark requirements to zero. The cost to implement a demand reduction program in 2009 has been reduced to zero accordingly in the Plan. This position does not affect 2010 peak demand reduction requirements. The justification for this position is filed in Case Nos. 09-578-EL-EEC and 09-579-EL-EEC. The Companies reserve the right to restore such funding if their application is not granted.

2. Based on the totality of the circumstances of this settlement, the Signatory Parties will not oppose the Companies' waiver request for 2009 and OCC will withdraw its opposition filed in Case Nos. 09-578-EL-EEC and 09-579-EL-EEC; however, this withdrawal of opposition should not be considered as support for the waiver. The Companies agree that the PDR benchmark is cumulative in 2010 and beyond and the Companies will catch up and make up the difference resulting from the 2009 waiver in 2010 (absent any future waivers).

D. Approval of Shared Savings for Measurable Programs

1. A shared savings mechanism that provides an after-tax net benefit of 15 percent to the Companies and 85 percent to Customers for measurable EE/PDR programs, based on the Utility Cost Test (UCT)[9] and subject to the incentive caps in Section E below, will be implemented. OCEA's Parties' agreement to accept the UCT in this context is based on the totality of the circumstances and the package as a whole and

---

9 Net benefits are calculated at the Portfolio level for all measurable programs within the Portfolio using the UCT.

should not be construed as an unqualified endorsement of the mechanism in the future or in any other case.

2. Signatory Parties will support the use of the TRC test to qualify the portfolio for cost recovery.

3. That each electric utility respectively will only be eligible for an incentive (i.e., lesser of shared savings or program investment cost cap) if it exceeds the benchmarks of Sections 4928.66(A)(1)(a) and (A)(1)(b), Revised Code, for a particular calendar year. The Companies would remain eligible to receive an incentive if the Commission amends the compliance requirement for that year under Section 4928.66(A)(2)(b), Revised Code, and the Companies meet or exceed the amended requirement. If the Commission amends the compliance requirement for a particular year, AEP-Ohio agrees that, in the following year, its compliance will be the cumulative energy savings benchmark for that year plus the energy savings not attained towards the benchmark in the earlier year. These restrictions are collectively referred to as "compliance" for purposes of triggering incentive eligibility, such that AEP-Ohio will only be eligible for an incentive payment if it exceeds the cumulative energy savings benchmark for that year and the energy savings not attained in the earlier year.[10]

4. The Companies will receive the lesser of the 15 percent after-tax UCT-based shared savings calculation or a graduated percentage cap on program costs for measurable EE/PDR programs, as reflected in the table included below as part of section E.

5. For electric utility incentive purposes, total annual savings will be used in the shared savings calculation and total annual program costs will be used to calculate the program cost caps.

E. Incentive Qualifications and Cap Provisions

1. The Companies will not receive any shared savings for the Self Direct program.

---

10 The Stipulation provides that "Due to the fact that AEP-Ohio is embarking in good faith to meet its benchmarks and that its energy efficiency programs are in start-up mode, OCC is agreeing to this provision, however, this agreement should not be construed as supporting this concept in the future."

2. Each of the Companies may only count savings for compliance or incentives one time, but reserves the option of either counting any portion of over-compliance in the year of compliance (receiving the associated incentive at that time) or banking any portion for use in connection with a subsequent year (reserving the associated incentive in connection with that future year).

3. The 15 percent electric utility shared savings incentive will be capped per level of over-compliance based on the table below:

Performance Incentives = Lesser of Shared Savings or Program Investment Cap Percentage

Benchmark EE Target % Achievement for Overcompliance	Shared Savings	Program Investment Cost Cap % for Measurable Programs
Greater than 100%[11] to 106%	15%	6%
Greater than 106% to 115%	15%	12%
Greater than 115%	15%	17%

F. **Approval of Net Lost Distribution Revenues**

1. Net lost distribution revenues will be approved, but will exclude all distribution revenue associated with customer charges, pass-through riders and riders, that are trued-up to actual costs. The Companies will be permitted to collect net lost distribution revenues on an annual basis.

2. Three vintage years of net lost distribution revenue recovery will exist or recovery will occur until rates are approved and effective in each Company's next respective distribution base rate case, whichever comes first. If one or both of the Companies files a distribution revenue decoupling application and it is approved by the Commission, then Section F, Approval of Net Lost Distribution Revenue, will no longer apply as of the time that such approved decoupling mechanism becomes effective.

11 As described above, the Companies would remain eligible to receive an incentive if the Commission reduces the compliance requirement below 100 percent for a particular year under Section 4928.66(A)(2)(b), Revised Code, and the Companies meet or exceed the amended requirement.

3. If a distribution base rate filing is made and approved during the term of the Plan, a new three-year vintage period will apply to new programs or measures not captured by the test period (or post-test year adjustments) used in such distribution base rate case.

G. Approval of Initial EE/PDR Rider Rates and Operation of the Rider

1. CSP's initial EE/PDR Rider and OP's initial EE/PDR rider rates should be established as reflected in Attachment A to the Stipulation, effective on the first billing cycle of January 2010. If the initial EE/PDR rider rates are not approved to be effective on the first billing cycle of January 2010, then the revenues that would have been collected in the first six months of 2010 based on the initial EE/PDR rider rates (i.e., through the last billing cycle of June 2010) will be collected in such shorter time available before the last billing cycle of June 2010.

2. The Companies' EE/PDR riders should be trued-up annually to actual program costs, net lost distribution revenues, and shared savings. The net lost distribution revenues will be calculated based on a half-year convention.

3. The annual true-up of the Companies' EE/PDR Riders will be effective in the first billing cycle of July of 2010 and 2011. The timing of the true-up is recommended to follow the annual March 15 compliance filing in support of program achievement and Commission compliance approval each year.

4. Distribution lost revenues and shared savings calculations will be based on the same data as approved by the Commission in the Companies' annual compliance filings.

5. The Companies will not collect carrying charges in connection with operation of the EE/PDR rider.

H. Rate Design and Cost Allocation Methodology

1. Program dollars may only be shifted within the residential class and among non-residential classes, but not across the residential and non-residential classes, unless otherwise approved by the Commission. Cost recovery will be based on the class for which the program is available.

2. Distribution revenue by tariff will be used to allocate program costs, net lost distribution revenue, and shared savings. The amount of nonresidential program funding available to GS 4/IRP tariff customers is limited to the proportion of non-residential distribution revenue provided by GS 4/IRP. For example, if GS 4/IRP provides ten percent of the non-residential distribution revenue, then GS 4/IRP will not receive more than ten percent of the non-residential program funding. However, program funding to GS 4/IRP may exceed this limit if the Companies reasonably determine that an increase is necessary to meet the EE/PDR benchmarks. The Companies may limit program funding to individual GS 4/IRP customers, or any other non-residential customers, to ensure that a disproportionately large share of total program funding is not concentrated among a few customers. Methods could include a program percentage cap or declining incentive tiers for large projects or any other reasonable mechanism as determined by the Companies. This methodology does not impact residential customer allocations covered in paragraph H.1. The rate impacts using this methodology are contained in Attachment A to this Stipulation.

3. The costs associated with the Plan should be recovered through the EE/PDR Rider by spreading the three-year portfolio plan costs over 2010 and 2011 (24 months). The initial rider only includes the first year of net distribution lost revenues and first year shared savings based on assumed compliance of greater than 100 percent, but less than or equal to 106 percent; distribution lost revenue and shared savings for subsequent years would be reconciled and reflected in the annual update filings.

I. Mercantile customer commitment of previously installed EE/PDR resources

1. Customer savings from previously installed EE/PDR resources approved by the Commission for being committed to the Companies are not counted in net benefits to determine shared savings.

2. No net lost distribution revenue is recoverable from previously installed EE/PDR resources approved by the Commission for being committed to the Companies.

3. To support the Companies' Self Direct Program as designed in the Plan to commit previously installed EE/PDR resources. "Option 1" provides mercantile customers the opportunity to receive a reduced incentive payment that is equivalent to an advance payment of a portion of the customer's EE/PDR Rider cost obligation due to the requirement that the customer continues to pay the EE/PDR Rider cost for the length of time that the customer would otherwise be exempt from the EE/PDR Rider. "Option 1" is for customers who have completed some EE/PDR projects but want to use the advanced payment to help support new EE/PDR investments. Option 1 also requires participating customers to continue paying the rider in support of further EE/PDR program efforts by the Companies. "Option 2" provides mercantile customers the opportunity to be exempt from the EE/PDR Rider if their committed energy savings equal the Companies' mandated benchmark requirement percentages of energy savings based on the customer's 2006-2008 average annual energy usage baseline. Residential customers will not contribute to the cost of the Self-Direct Program.

4. Individual OCEA Parties reserve their right to oppose individual Self Direct Program applications.

5. If a mercantile customer unilaterally files [an application] with the Commission to commit resources to AEP-Ohio, the Signatory Parties reserve any rights to take whatever position they deem appropriate in response to that filing and the outcome will be subject to Commission decision.

J. Miscellaneous Terms and Commitments

1. The Companies will develop a time schedule to discuss detailed program economics, if any, on a joint delivery program with Columbia Gas of Ohio in 2010 and report back within the second quarter of 2010 to the Collaborative.

2. Accept the Companies' avoided costs calculations with the understanding that such calculations used for future years will use a date certain construct.

3. In approving the Stipulation, the Commission is granting the Companies all necessary and appropriate accounting authority

to implement the Stipulation and administer the EE/PDR Rider as described above in Section G, including but not limited to accounting authority to record a regulatory asset for any under-recovery or a regulatory liability for any over-recovery of EE/PDR program costs, shared savings and net lost distribution revenues. This shall be trued up annually as set forth in Section G.2.

4. The Plan is designed to meet or exceed the Companies' respective EE/PDR benchmarks for 2009, as reflected in Attachment B. The Signatory Parties agree that those calculations are appropriate and should be adopted as an initial benchmark report under adopted Rule 4901:1-39-05(A), O.A.C., and ultimately for compliance purposes for 2009. The baselines reflected above are not normalized but do reflect the economic development adjustments approved by the Commission in the Companies' ESP cases.

5. The Companies agree to reserve from the Plan's pilot program fund $250,000 per year in 2010 and 2011 for energy efficiency audits available for the non-residential customer class and from that amount will reserve $50,000 per year in 2010 and 2011 for an OHA-administered hospital specific energy efficiency audit program to be developed by the Companies with OHA input. In addition, the Companies shall provide $30,000 per year for 2009, 2010, and 2011 to the OHA to be used to assist hospitals served by the Companies to identify qualifying energy efficiency projects and also to assist hospitals in applying for financial incentives under the Companies' EE/PDR programs. All funding is recoverable through the EE/PDR Rider. To the extent OHA is able to assist the Companies in educating its members on the Companies' programs and gain participation of OHA's members, it is expected that this funding will offset the Companies' promotional costs.

6. AEP-Ohio shall work with the OMA to communicate energy efficiency programs to manufacturers in the Companies' service territories. To assist in the development of comprehensive communication tools and strategies to promote AEP Ohio's EE/PDR programs with its members and assist in their participation, AEP-Ohio shall provide the OMA $100,000 per 12-month period beginning on Commission approval of this Stipulation. Any time period with the life of this filing not

12 months shall be prorated to reflect that time period's share of a 12-month $100,000 contribution. To the extent OMA is able to assist the Companies in educating its members on the Companies' programs and gain participation of OMA's members, it is expected that this funding will offset the Companies' promotional costs.

7. The Companies agree that OPAE will be the designated contractor for the Low Income Program described in Section 6.1.3 of the EE/PDR Action Plan, revised as follows: The cumulative total energy savings shall equal or exceed 26,044,500 kWh; the cumulative total demand reduction shall equal or exceed 3,141 net kW; and Participation will be all cost-effective electric measures, including those listed in the Action Plan, in a projected 17,363 residences. The Benefit-Cost Test Ratio under the TRC is estimated to be 0.75. OPAE will make its best efforts to achieve a TRC that exceeds 1.0. OPAE shall be permitted to spend up to $16,110,000 for the programs and shall receive an administrative fee of three percent of direct costs. The program shall operate from January 1, 2010 through December 31, 2011. The Companies agree that OPAE will administer an additional $1 million from shareholder funds (Partnership with Ohio) for nonenergy efficiency repairs to enable electric energy efficiency measure installations and shall be permitted to expend no more than three percent of direct expenditures for administrative costs.

K. **Procedural Matters**

1. Except for enforcement purposes, neither the Stipulation nor the information and data contained within or attached thereto shall be cited as precedent in any future proceeding for or against any Signatory Party, or the Commission itself, if the Commission approves the Stipulation. Nor shall the acceptance of any provision as part of the settlement agreement be cited by any Signatory Party or the Commission in any forum so as to imply or state that any Signatory Party agrees with any specific provision of the settlement. More specifically, no specific element or item contained in or supporting the Stipulation shall be construed or applied to attribute the results set forth in the Stipulation as the results that any Signatory Party might support or seek, but for the Stipulation in these proceedings or in any other proceeding. The Stipulation

contains a combination of outcomes that reflects an overall compromise involving a balance of competing positions, and it does not necessarily reflect the position that one or more of the Signatory Parties would have taken for the purposes of resolving contested issues through litigation. The Signatory Parties believe that the Stipulation, taken as a whole, represents a reasonable compromise of varying interests.

2. The Signatory Parties will support the Stipulation if the Stipulation is contested, and no Signatory Party will oppose an application for rehearing designed to defend the terms of this Stipulation.[12]

3. The testimony of the Companies' witnesses Williams and Roush are being filed in support of the Companies' Application and the Signatory Parties' Stipulation. The Signatory Parties hereby stipulate to the admission of the testimony into the record in this proceeding. To the extent that any non-Signatory Party opposes adoption of the Stipulation, the Signatory Parties reserve the right to file rebuttal testimony in further support of the Stipulation.

4. The Stipulation is conditioned upon adoption of the Stipulation by the Commission in its entirety and without material modification.[13] If the Commission rejects or modifies all or any part of the Stipulation, any Signatory Party shall have the right to apply for rehearing. If the Commission does not adopt the Stipulation without material modification upon rehearing, then within thirty days of the Commission's Entry on Rehearing, any Signatory Party may terminate and withdraw from the Stipulation by filing a notice with the Commission. Upon the filing of such notice, the Stipulation shall immediately become null and void. No Signatory Party shall file a notice of termination and withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement is reached, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies

12 OPAE and OPLC will neither support nor oppose Sections D and E of the Stipulation.

13 Any Signatory Party has the right, in its sole discretion, to determine what constitutes a "material" change for the purposes of that Party withdrawing from the Stipulation.

the intent of the Stipulation are unsuccessful, the Commission will convene an evidentiary hearing to afford the Signatory Parties the opportunity to present evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if the Stipulation had never been executed. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, some, or all, of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing, if necessary.

5. Unless a Signatory Party exercises its right to terminate its Signatory Party status or withdraw as described above, each Signatory Party agrees to and will support the reasonableness of the Stipulation before the Commission, and to cause its counsel to do the same, and in any appeal from the Commission's adoption and/or enforcement of this Stipulation.[14] The Signatory Parties also agree to urge the Commission to accept and approve the terms hereof as promptly as possible.

V. DISCUSSION OF THE STIPULATION

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into stipulations. Although it is not binding on the Commission, the terms of such agreements are accorded substantial weight. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 125, citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155. This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Commission proceedings. See, e.g., *Ohio-American Water Co.*, Case No. 99-1038-WW-AIR, Order (June 29, 2000); *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR, Order (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Order (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al., Order (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR, Order (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC, Order (November 26, 1985). The ultimate issue for our consideration is whether the agreement,

14 OPAE and OPLC will support the reasonableness of the Stipulation in any future litigation with the exception of Sections D and E, which they will neither oppose nor support.

which is the product of considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.* (1994), 68 Ohio St.3d 559 *(citing Consumers' Counsel, supra,* at 126). The Court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (Id.)

As explained further below, IEU-Ohio argues that the Stipulation fails to meet the criteria for approving a stipulation because it does not benefit ratepayers, is not in the public interest, and violates important regulatory principles.

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

AEP-Ohio argues that in the Stipulation the Signatory Parties agree, and IEU-Ohio's testimony does not contest, that the Stipulation is the product of lengthy negotiations between capable and knowledgeable parties. The portfolio plan program was developed by way of a collaborative process which AEP-Ohio states commenced in October 2008. Further, the Companies assert that all members of the collaborative, including IEU-Ohio, were invited to provide input and openly negotiate the Stipulation with other stakeholders. AEP-Ohio notes that the collaborative included interested stakeholders that represented residential, commercial and industrial consumer advocates, state regulatory agencies, environmentalists, the healthcare industry, education, and low-income consumer advocates. Accordingly, AEP-Ohio contends that the Stipulation meets the first criterion of the test (Jt. Ex. 1 at 1; Cos. Ex. 1 at 8-9; Cos. Br. at 5; Cos. Reply Br. at 2).

In their joint brief filed on March 10, 2010, OCC, OEC, Sierra, and NRDC support the reasonableness of the Stipulation and state that the Signatory Parties have extensive experience and expertise in energy efficiency programs. Further, OCC, OEC, Sierra, and NRDC note that the Stipulation was not entered into lightly and the AEP-Ohio Portfolio

Plan was developed by way of a collaborative process where all the signatories were afforded an opportunity to advocate their positions in negotiations. They claim that the Stipulation is the result of a determined effort to provide an EE/PDR program that will benefit consumers and AEP-Ohio. For these reasons, OCC, OEC, Sierra, and NRDC argue that the Stipulation meets the first criterion. (OCC, OEC, Sierra, and NRDC Br. at 2-5).

The Commission finds that the Stipulation involved serious bargaining by knowledgeable, capable parties. First, we note that most of the Signatory Parties have actively participated in previous Commission proceedings and are familiar with the process. Next, we recognize that through the collaborative process, numerous representatives of interested stakeholders were afforded an opportunity to negotiate the components of AEP-Ohio's portfolio plan. Finally, we notice that IEU-Ohio, the one opponent to the Stipulation, does not take issue with this factor of the reasonableness test for consideration of the Stipulation.

B. <u>Does the settlement, as a package, benefit ratepayers and the public interest?</u>

1. <u>Consideration of Rate Increases</u>

IEU-Ohio contends that AEP-Ohio has not met its burden to prove that AEP-Ohio's Portfolio Plan benefits ratepayers and is in the public interest because it will result in a rate increase to customers. More specifically, IEU-Ohio argues that, although the total bill increase customers will experience as a result of the Portfolio Plan ranges from .4 percent to 3.4 percent for CSP customers and .4 percent to 4.0 percent for OP customers, the Commission can not view this increase in isolation but must consider other recent rate increases approved by the Commission.

AEP-Ohio argues that the Commission reviewed and approved, as part of the Companies' ESP cases, the rate increases that IEU-Ohio takes issue with as well as the EE/PDR Rider. The Companies state that the cost of statutory compliance programs should not be offset by other increases previously approved by the Commission (Cos. Br. 11-12).

The Commission notes that we have recently rejected similar arguments by IEU-Ohio wherein IEU-Ohio claims that, because approval of the Stipulation will result in a rate increase for customers, a Commission order approving the Stipulation is unreasonable or unlawful, does not benefit ratepayers, and/or is not in the public interest.[15] We find this argument to be without merit. The Commission evaluates the benefits of the Stipulation to ratepayers on a variety of factors, not just rates. Particularly in this case, we will consider whether AEP-Ohio's Action Plan sufficiently encourages energy efficiency,

[15] See *In re Columbus Southern Power Co. and Ohio Power Co.*, Case Nos. 09-872-EL-FAC, et al., Entry on Rehearing at 6-7 (March 24, 2010).

such that it is likely to achieve a reduction in energy consumption and an associated public benefit.

2. Cost/Benefit Analysis

IEU-Ohio also argues that, based on Mr. Murray's comparison of AEP-Ohio's Action Plan to similar energy efficiency plans proposed by other electric utilities in other states, that AEP-Ohio's Portfolio Plan has relatively high costs to benefits (IEU-Ohio Ex. 1 at 4, 12-14; Tr. 116-117). Based on Mr. Murray's conclusion that the AEP-Ohio's Portfolio Plan had relatively high costs in comparison to benefits, IEU-Ohio conducted a more targeted analysis of the Portfolio Plan. In IEU-Ohio's view, AEP-Ohio's Portfolio Plan is unlawful because it does not include lower cost options to achieve compliance with peak demand reduction requirements.

According to Mr. Murray, AEP-Ohio could achieve peak demand reduction compliance by leveraging its customers' participation in the demand response programs offered by PJM Interconnection LLC (PJM) and reduce the cost of the Portfolio Plan by approximately $7.0 million (IEU-Ohio Ex. 1 at 21; Tr. 87). IEU-Ohio asserts that ignoring lower cost options that reduce the overall cost of the Portfolio Plan does not benefit ratepayers, is not in the public interest, and is contrary to the state's policies set forth in Section 4928.02(A), Revised Code, which, among other things, seeks to ensure consumers the availability of reasonably priced electric service. For these reasons, IEU-Ohio posits that the Stipulation should not be approved by the Commission. Alternatively, IEU-Ohio requests that the Commission direct AEP-Ohio to modify its Portfolio Plan to permit customer-sited demand response capabilities to qualify as capacity resources in PJM's market, which will be counted as part of AEP-Ohio's portfolio obligation, provided the customer commits its capabilities to AEP-Ohio.

The Companies note that, as Mr. Murray admits, he is not a demand side management (DSM) expert and that he was only conceptually familiar with the four stages of energy efficiency, and DSM concepts and definitions (Tr. 71-73, 79, 96). AEP-Ohio emphasizes that Mr. Murray did not have direct or personal knowledge of the documents attached to his testimony in support of his comparison to other energy efficiency programs (Tr. 67-69). The Companies argue that based on Mr. Murray's lack of understanding about DSM, and his lack of knowledge of the documents or data relied on for his claims regarding AEP-Ohio's Plan, the Commission should not afford exhibits KMM-1, KMM-2, or KMM-3 attached to his testimony, or any statements made in reference to such exhibits, any evidentiary weight (Cos. Br. at 8).

Further, AEP-Ohio states that Mr. Murray used theTRC test to perform his comparison of energy efficiency plans but overlooked that a component of the TRC test is the utilities' avoided costs. Each utility's avoided cost is unique to the particular utility. AEP-Ohio reasons that, because each utility's avoided cost is different, Mr. Murray's comparison of AEP-Ohio's energy efficiency plan components to that of other utilities based on TRC values, without the avoided cost information, is of no value to the Commission's evaluation of the plan (Tr. at 97, 100; Cos Br. at 9). Furthermore, the Companies note that Mr. Murray did not compare the components of each program or the consumption profiles of the markets involved (Tr. at 75). Finally, AEP-Ohio emphasizes that there are mathematical errors in Mr. Murray's Exhibit KMM-3, including comparing the cumulative savings over a four year period for certain of the other utility plans evaluated in comparison to one year of savings for the AEP-Ohio Plan and the computation of lifetime costs saved for Appalachian Power Company (APCo) to that of AEP-Ohio. On cross-examination, Mr. Murray admits that these errors affect his analysis (Tr. at 104).

AEP-Ohio argues that IEU-Ohio's claims regarding lower cost options is inaccurate and based on a misperception of the Commission's rules. AEP-Ohio witness Williams testified that AEP-Ohio plans to offer a "PJM-equivalent" demand response program. The Companies assert that Rule 4901:1-39-05(E)(2), O.A.C., does not automatically result in commitment of customer-sited resources toward the electric utility's compliance efforts or that, if AEP-Ohio customers participate in PJM's wholesale demand response program, the customer's resource pursuant to PJM is considered a capacity resource for AEP-Ohio (Tr. at 38-40, 45-46, 54-55).

The Commission finds that IEU-Ohio's analysis of AEP-Ohio's Action Plan and its comparison to the energy efficiency programs of other electric utilities was inadequate and not sufficiently detailed to convince the Commission that the costs of the AEP-Ohio's programs are excessive for the benefits. Our review of the record leads us to believe that the energy efficiency programs in AEP-Ohio's Plan are on par with those of the electric utilities referenced in this proceeding, and are consistent with the Commission's rules in Chapter 4901:1-39, O.A.C. We recognize that AEP-Ohio has proposed, in Case Nos. 10-343-EL-ATA and 10-344-EL-ATA, which are currently pending before the Commission, to offer its own demand response programs.

3. <u>Lost distribution revenue recovery</u>

Next, IEU-Ohio contends that AEP-Ohio has failed to demonstrate that the recovery of lost distribution revenue is necessary to allow CSP or OP the opportunity to recover its cost of providing distribution service and a fair and reasonable rate of return, as provided in the Stipulation. AEP-Ohio witness Rousch, in IEU-Ohio's opinion, merely explained how lost distribution revenue is calculated (Joint Ex. 1 at 9; AEP-Ohio Ex. 2 at 5). IEU-Ohio argues that no evidence was presented to demonstrate that recovery of lost distribution revenue is appropriate or necessary. Furthermore, IEU-Ohio contends that even assuming that AEP-Ohio had demonstrated that recovery of the lost distribution revenue was reasonable, AEP-Ohio's calculation of the lost distribution revenue is incorrect. IEU-Ohio argues that AEP-Ohio overstates the potential lost distribution revenue because its calculation is based on the assumption that AEP-Ohio will experience lost distribution revenue if commercial and industrial customers reduce energy usage. IEU-Ohio contends that this overlooks the fact that commercial and industrial customer distribution energy charges are based on fixed monthly customer charges, demand charges subject to ratchets, and variable distribution charges based on energy consumption (IEU-Ohio Ex. 1 at 18). IEU-Ohio contends that most base distribution revenues are collected via the monthly customer charges and demand charges (IEU-Ohio Ex. 1 at 18). IEU-Ohio asserts that AEP-Ohio witness Roush simply divided the total annual base distribution revenue by billed energy, excluding customer charges and pass-through riders, to derive an average distribution revenue which significantly overstates the variable distribution charges that AEP-Ohio collects from commercial and industrial customers (IEU-Ohio Ex. 1 at 17- 18). Thus, IEU-Ohio asserts that the Commission should not approve the Stipulation, but if the Commission elects to adopt the Stipulation, the Commission should direct AEP-Ohio to eliminate the lost distribution revenue from the EE/PDR Rider (IEU-Ohio Ex. 1 at 17- 18).

AEP-Ohio responds that Section 4928.66(D), Revised Code, allows for the recovery of revenue that otherwise may be foregone by the electric utility as a result of or in connection with the implementation of energy efficiency or energy conservation programs. With the adoption of Rule 4901:1-39-07(A), O.A.C., AEP-Ohio contends that the Commission unequivocally endorsed the electric utility's recovery of appropriate lost distribution revenue and shared savings. IEU-Ohio witness Murray admitted that AEP-Ohio would receive less revenue when commercial/industrial customers on certain rate schedules reduce their peak demand and corrected his testimony accordingly (Tr. at 64-65, 90-92). AEP-Ohio argues that the annual EE/PDR review will include a reconciliation of actual net distribution lost revenue as reflected on the Companies' books based on actual measure installations and a reconciliation of shared savings based upon annual kWh savings through actual measure installations accomplished in the calendar year relative to the benchmark and the graduated incentive scale included in the Stipulation (Cos. Ex. 2 at 7).

OCC, OEC, Sierra, and NRDC state that the Stipulation benefits consumers and the public interest by directing more money to customer incentives, facilitating the transparent review of the program's administrative costs, and providing shared savings based on new programs. Recognizing the Companies' existing interruptible service load as counting toward the PDR benchmarks reduces AEP-Ohio's compliance cost for PDR programs. OCC, OEC, Sierra, and NRDC offer that the Stipulation also specifically excludes certain aspects of the portfolio program from customer rates, as the original Action Plan will not be included in the EE/PDR Rider, the cost to implement a demand reduction program in 2009 will be zero, and AEP-Ohio will not collect carrying charges in connection with the EE/PDR Rider. As OCC, OEC, Sierra, and NRDC state, the Stipulation also supports energy efficiency audits for hospitals and energy efficiency programs for manufacturers.

Thus, OCC, OEC, Sierra, and NRDC assert that the Stipulation meets the second criterion. (OCC, OEC, Sierra, and NRDC Br. at 5-6).

With regard to the recovery of lost distribution revenue, the Commission agrees with AEP-Ohio that Section 4928.66, Revised Code, authorizes the Commission to approve a revenue decoupling mechanism which provides for the recovery of revenue that may otherwise be foregone by the utility as a result of or in connection with the implementation by the electric distribution utility of any energy efficiency or energy conservation programs. AEP-Ohio is also correct that in adopting Rule 4901:1-39-07(A), O.A.C., the Commission established an opportunity for an electric distribution utility to include, in its portfolio filing, a proposal for such a revenue decoupling mechanism. The need for a revenue decoupling mechanism arises from traditional rate designs that recover fixed distribution costs through volumetric charges. These designs leave utilities at risk of not collecting enough revenue to cover their fixed distribution costs when sales fall, and may provide an opportunity for utilities to collect revenue in excess of expenses if sales increase. The Commission believes that it is important to break or weaken the link between sales volume and the recovery of fixed distribution costs. Further, we recognize that all of the Signatory Parties, which represent a broad base of interests, entered into the Stipulation accepting the distribution-based lost revenue calculation. As with any stipulation, it is reasonable, for the Commission to assume that the Signatory Parties herein negotiated provisions of the Stipulation in exchange for AEP-Ohio's recovery of lost distribution revenue.

However, in this instance, the Commission agrees with IEU-Ohio that the record fails to establish what revenue is necessary to provide AEP-Ohio with the opportunity to recover its costs and to earn a fair and reasonable return. Without this information, the Commission cannot determine whether the Signatory Parties' proposal included in Section F of the Stipulation is reasonable. Given that CSP's last distribution rate case occurred in 1991 and OP's last distribution rate case occurred in 1994, AEP-Ohio's actual costs of service are unknown at this time. Therefore, at this time, the Commission will temporarily grant AEP-Ohio lost revenue recovery through January 1, 2011. During this time, AEP-Ohio is encouraged to propose a mechanism to answer the Commission's concern regarding quantification of fixed costs, as well as a mechanism to achieve revenue decoupling, which may include, but is not limited to, the method proposed in this filing: lost distribution revenue recovery, a decoupling rider, or any other method which reduces or eliminates the link between sales volume and recovery of fixed distribution costs. If AEP-Ohio proposes a reasonable mechanism, the Commission will consider a request to extend the recovery period while the mechanism is considered.

With this modification, the Commission is convinced that the Stipulation, as a package, benefits ratepayers and the public interest. We note that pursuant to the Stipulation, program costs and shared savings will be reviewed and reconciled.

C. Does the settlement package violate any important regulatory principle or practice?

OCC, OEC, Sierra, and NRDC advocate that the Stipulation does not violate any important regulatory principle or practice. They note that the purpose of the Stipulation is to assist AEP-Ohio in meeting the EE/PDR benchmarks, while preserving the other Signatory Parties' right to challenge AEP-Ohio's incentive-based renewal energy credit program for solar photovoltaic and small wind resources, as well as its solar photovoltaic and small wind REC purchase program, and to oppose individual Self Direct program applications. Further, OCC, OEC, Sierra, and NRDC explain that the Stipulation includes a true-up mechanism for the EE/PDR Rider and a cap on shared savings, which provide stability for the funding and costs of the Portfolio Plan. As such, OCC, OEC, Sierra, and NRDC assert that the Stipulation meets the third criterion for the Commission's adoption of a stipulation agreement. Thus, they urge the Commission to approve the Stipulation without modification. (OCC, OEC, Sierra and NRDC Br. at 6-7).

In previous mercantile rider exemption cases considered by the Commission,[16] we found that it would be both equitable and reasonable to accept a mercantile customer's application for rider exemption using the benchmark comparison method to determine whether a rider exemption is appropriate when, in reliance upon the prior version of Rule 4901:1-19-08, O. A. C., the customer and the electric utility reached agreement on the application between June 17, 2009[17] and December 10, 2009.[18] However, mercantile customer rider exemption requests arising from agreements subsequent to the December 10, 2009 effective date of the rules shall not rely upon the benchmark comparison method. Thus, the segment of the Stipulation described herein in Section IV.I.3 of this Order, is clarified to reflect that a calculation that utilizes Option 2, the benchmark comparison method, is only available for applications for mercantile customer rider exemption for agreements entered into between June 17, 2009 and December 10, 2009. Further, we direct

16 See FN 1 in February 11, 2009 Entries in Case Nos. 09-595-EL-EEC, 09-1100-EL-EEC, 09-1101-EL-EEC, 09-1102-EL-EEC, 09-1200-EL-EEC, 09-1201-EL-EEC, 09-1400-EL-EEC, 09-1500-EL-EEC.

17 On June 17, 2009, in adopting Rule 4901:1-19-08(B)(1) and (2), O.A.C., the Commission required a mercantile customer to submit information sufficient for the Commission to compare the reductions achieved by the customer to the electric utility's benchmark in order to qualify for a rider exemption. See, Green Rules, Entry (June 17, 2009).

18 On October 15, 2009, the Commission reversed its prior position and rejected the benchmark comparison method, stating:

> We have deleted from the rule, requirements for mercantile customer baseline energy use and peak demand because we do not anticipate basing exemptions on whether a particular mercantile customer has or has not achieved a percentage of energy savings equivalent to the electric utility's annual benchmark.

See Green Rules, Entry at 14 (October 15, 2009).

Staff to track volumes, and report quarterly to the Commission, percentages of nonresidential sales for customers that have been granted exemptions from the EE/PDR Riders.

Upon review of the Stipulation, its various provisions and the regulatory principles and practices implicated by the agreement, the Commission finds that the Stipulation as modified herein, does not violate any important regulatory principle or practice. Thus, the modified Stipulation meets the third criterion for considering the reasonableness of a stipulation.

VI. CONCLUSION

After reviewing the Stipulation, the Commission finds that the Stipulation and AEP-Ohio's energy efficiency Portfolio Plan adequately address the Companies' EE/PDR compliance requirements. We further find that the process used to develop the Companies' Portfolio Plan and to negotiate the Stipulation involved serious bargaining by knowledgeable, capable parties. After considering the Stipulation, in its entirety, the aspects of the Stipulation opposed by IEU-Ohio and the basis for their arguments as set forth in the record, the Commission concludes that the Stipulation, as a package, benefits ratepayers and the public interest. IEU-Ohio's analysis of AEP-Ohio's Action Plan and their comparison to the energy efficiency programs of other electric utilities was inadequate and not sufficiently detailed to convince the Commission that the issues raised justify modifying or rejecting the Stipulation, as IEU-Ohio recommends, except with regard to the recovery of lost distribution revenue. We are further convinced that the Stipulation, as a package, benefits ratepayers and the public interest, noting the broad base of support for the Stipulation, as evidenced by the Signatory Parties. We note that pursuant to the Stipulation, program costs and shared savings will be reviewed annually and reconciled. Finally, we note that, while the adoption of energy efficiency programs may result in a minimal rate increase, the programs offered may likewise result in energy efficiency savings for participating residential, commercial, and industrial customers and may ultimately avoid the need to construct additional generation facilities. For these reasons, we conclude that the Stipulation, in its entirety, benefits ratepayers and the public interest. We also find the Stipulation is in the public interest, as it offers energy efficiency programs for each class of AEP-Ohio customers, without the necessity of engaging in extensive and costly litigation. Lastly, the Stipulation does not violate any important regulatory principle or practice. Accordingly, the Stipulation should be approved as modified herein.

Accordingly, the Commission finds that the Companies should file their respective EE/PDR Rider rate tariffs consistent with this order, to be effective on a bills rendered basis, on a date not earlier than both the commencement of the Companies' June 2010 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon Commission approval. In light of the timing of the effective date of the EE/PDR Riders, the Commission finds that the first true-up should be filed to be effective July 2011. The EE/PDR Rider shall end with the last billing cycle of December 2011 with a final true-up in the first quarter of 2012.

FINDINGS OF FACT and CONCLUSIONS OF LAW:

(1) CSP and OP are public utilities as defined in Section 4905.02, Revised Code, and, as such, are subject to the jurisdiction of this Commission.

(2) On November 12, 2009, CSP and OP filed applications for approval of their respective portfolio plans to comply with EE/PDR requirements in Senate Bill 221. Contemporaneously, AEP-Ohio filed a Stipulation entered into by AEP-Ohio, OCC, OMA, OEC, OPAE, Sierra, NRDC, OEG, OPLC, OHA, and Ormet, addressing all of the issues raised in the application.

(3) IEU-Ohio filed objections and recommendations to AEP-Ohio's application on December 11, 2009. AEP-Ohio filed a response on December 23, 2009. IEU-Ohio filed a reply on December 30, 2009.

(4) Motions to intervene were filed by Ormet, IEU-Ohio, OPAE, Sierra Club, OEG, OHA, OMA, OEC, OCC, NRDC, and EnerNOC. All requests for intervention were granted.

(5) An evidentiary hearing was held on February 25, 2010.

(6) Initial briefs were filed by AEP-Ohio, IEU-Ohio, and jointly by OCC, OEC, Sierra, and NRDC, on March 10, 2010. Reply briefs were filed by AEP-Ohio and IEU-Ohio on March 19, 2010.

(7) The Stipulation, as a package, meets the Commission's criteria for reasonableness and is approved, as modified herein.

ORDER:

It is, therefore,

ORDERED, That the Companies' application for approval of their respective portfolio programs, pursuant to the Stipulation filed in conjunction with the application, be adopted, as modified herein. It is, further, ORDERED, That the Companies file their EE/PDR Rider tariffs consistent with this opinion and order, to be effective on a bills rendered basis, on a date not earlier than both the commencement of the Companies' June 2010 billing cycle, and the date upon which final tariffs are filed with the Commission, contingent upon final review and approval by the Commission. It is, further,

ORDERED, That CSP and OP are authorized to file in final form four complete, printed copies of its tariffs consistent with this opinion and order. The Companies shall file one copy in this case docket and one copy in each Company's TRF docket (or may make such filing electronically, as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to Staff. It is, further,

ORDERED, That the Companies notify all affected customers of the changes to the tariff via bill message or bill insert within 45 days of the effective date of the tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division at least 10 days prior to its distribution to customers. It is, further, ORDERED, That a copy of this opinion and order be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Valerie A. Lemmie

Steven D. Lesser

Cheryl L. Roberto

GNS/RLH/vrm

Entered in the Journal

MAY 1 3 2010

Reneé J. Jenkins
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ormet Primary Aluminum Corporation for Approval of a Unique Arrangement with Ohio Power Company and Columbus Southern Power Company.	)	Case No. 09-119-EL-AEC

OPINION AND ORDER

The Commission, considering the above-entitled application, hereby issues its opinion and order in this matter.

APPEARANCES:

Sonnenschein Nath & Rosenthal LLP, by Clifton A. Vince, Douglas G. Bonner, Daniel D. Barnowski, and Emma F. Hand, 1301 K Street NW, Suite 600 East Tower, Washington, D.C. 20005, on behalf of Ormet Primary Aluminum Corporation.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Thomas Lindgren and Thomas McNamee, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Marvin I. Resnik and Steven T. Nourse, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215, on behalf of Columbus Southern Power Company and Ohio Power Company.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Gregory J. Poulos, and Maureen R. Grady, Assistant Consumers' Counsel, Office of Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential consumers of Columbus Southern Power Company and Ohio Power Company.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Ohio Energy Group.

McNees, Wallace & Nurick, LLC, by Samuel C. Randazzo, Lisa G. McAlister and Joseph M. Clark, 21 East State Street, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

Chester, Willcox & Saxbe, LLP, by John W. Bentine, Mark S. Yurick, and Matthew S. White, 65 East State Street, Suite 1000, Columbus, Ohio 43215-4213, on behalf of The Kroger Company.

OPINION:

I. History of the Proceeding

On February 17, 2009, Ormet Primary Aluminum Corporation (Ormet) filed an application pursuant to Section 4905.31, Revised Code, to establish a unique arrangement with the Ohio Power Company and Columbus Southern Power Company (AEP-Ohio) for electric service to its aluminum-producing facility located in Hannibal, Ohio. In its application, Ormet requests that the Commission establish a unique arrangement for electric service with AEP-Ohio that links the price of electricity for its facility for calendar years 2010 through 2018 with the price of aluminum as reported on the London Metal Exchange (LME). Ormet filed an amended application on April 10, 2009, to reflect the possible curtailment of the equivalent of at least two of its six potlines.

On March 9, 2009, Industrial Energy Users-Ohio (IEU-Ohio) filed comments regarding Ormet's application. Further on April 28, 2009, Ohio Energy Group (OEG) and Kroger Company (Kroger) each filed comments regarding Ormet's amended application.

Motions to intervene were filed by AEP-Ohio, IEU-Ohio, OEG, Kroger, and the Ohio Consumers' Counsel (OCC). Those motions were granted by the attorney examiner.

Based upon the comments, the attorney examiner set this matter for hearing. The hearing in this matter commenced on April 30, 2009, and concluded on June 17, 2009. At the hearing, Ormet presented four witnesses, OCC presented three witnesses, and Staff presented one witness. Briefs were filed on July 1, 2009, by Ormet, AEP-Ohio, OCC and OEG, IEU-Ohio, Kroger, and Staff.

II. Discussion and Conclusions

In support of the unique arrangement, Ormet argues that the benefits to the region of keeping Ormet in operation will more than offset the delta revenue paid by other ratepayers. Ormet claims that the undisputed expert testimony in the record of this proceeding demonstrates that, at full operations, Ormet provides $195 million of benefits to the regional economy (Ormet Ex. 5 at 1).

Ormet also contends that the proposed unique arrangement furthers the policy of the State of Ohio as codified in Section 4928.02, Revised Code. Ormet claims that the unique arrangement is designed to meet the specific needs of Ormet with respect to the price, terms, conditions, and quality options of electric service as specified by Section 4928.02(B), Revised Code. Further, Ormet claims that the unique arrangement will help Ohio compete in the global economy pursuant to Section 4928.02(N), Revised Code. Ormet contends that it competes in a global market and needs affordable energy in order to compete.

Ormet further contends that it has provided the information needed by the Commission to approve the unique arrangement. Ormet notes that it has provided an affidavit from its chief executive officer verifying the information provided in the application and that it has also provided verifiable data in support of the application.

OCC and OEG claim that Ormet's economic analysis of its impact on the region is flawed because it fails to factor in the negative economic impact on the rest of the state from raising electric rates to pay for the delta revenues (Tr. I at 263, 265). OCC and OEG assert that there will be a clear negative economic impact to requiring all other AEP-Ohio ratepayers to pay increased rates to pay for the delta revenues under the proposed unique arrangement.

IEU-Ohio notes that the Commission may approve a proposed unique arrangement if it is shown to be just and reasonable and that it furthers the policy of this state. However, IEU-Ohio argues that Ormet's application should not be approved. IEU-Ohio claims that there are no clear or reliable indications of how the proposed unique arrangement will produce sufficient beneficial outcomes to make the transfer of revenue responsibility just and reasonable. IEU-Ohio alleges that there are many unanswered questions regarding the proposed unique arrangement, including questions related to the future price of aluminum, the treatment of delta revenue, pending litigation between Ormet and its alumina supplier, Ormet's ability to negotiate a new tolling contract, the sale of significant assets currently owned by Ormet, and the minimum cash requirement associated with labor costs for 2010 and beyond.

The Commission finds that Ormet's application for a unique arrangement should be approved subject to a number of modifications set forth below. The evidence in the record of this proceeding demonstrates that Ormet provides significant economic benefits to the region. Specifically, the evidence demonstrates that Ormet provides $195 million in total employee compensation and benefits to the regional economy (Ormet Ex. 5 at 1). The evidence also indicates that Ormet is a key employer for the region (Ormet Ex. 5 at 3-4) and that Ormet's operations are responsible, indirectly, for the creation of an additional 2,400 jobs in the region (Tr. 1 at 262-263). Further, the record shows that Ormet's operations generate over $6.7 million in tax revenue each year (Tr. 1 at 271). Finally, although OCC and OEG, as well as Staff, claim that the increased rates paid by ratepayers will have a negative economic effect on the state's economy, no party presented evidence in the record which quantified this negative effect (TR. 1 at 264-265).

The Commission notes that, although the proposed unique arrangement covers the period between January 1, 2009 and December 31, 2018, the specific terms and conditions of the unique arrangement are distinctly different for calendar year 2009 than for the remaining years of the unique arrangement. Therefore, the Commission will address the terms related to calendar year 2009 separately.

A. <u>Terms of the Unique Arrangement for Calendar Year 2009</u>

Under the terms of the amended application, for the balance of calendar year 2009, Ormet will pay AEP-Ohio the lesser of the applicable AEP-Ohio tariff rate or $38.00 per MWh. If Ormet reduced its production by the equivalent of at least two potlines, Ormet's rate would be reduced to the lesser of the applicable AEP-Ohio tariff rate or $34.00 per MWh. Ormet requests that the rate for 2009 going forward be set at a level that, taking into account the rate that Ormet has been paying to date, would result in an average rate of $38.00 per MWh for the portion of the year that Ormet was above the four potline operating level and an average rate of $34.00 per MWh for the portion of the year that Ormet was operating at four potlines or less.

OCC and OEG argue that, while Ormet's proposed unique arrangement for 2009 is reasonable in most respects, the provisions calling for retroactive recovery of discounted rates should be rejected. OCC and OEG note that the proposed unique arrangement requests the Commission make the unique arrangement retroactive to January 1, 2009. OCC and OEG allege that this would result in Ormet receiving discounted rates for electricity that were different from the rates which were approved and in effect at the time the service was delivered. OCC and OEG argue that this would constitute retroactive ratemaking which is prohibited. *Lucas County v. Public Util. Comm.* (1997), 80 Ohio St.3d 344, 348-349. Further, OCC and OEG contend that Ormet should be required to pay AEP-Ohio's economic development rider. OCC and OEG note that this rider is unavoidable and that Ormet should pay this rider just like all other customers.

Finally, OCC and OEG claim that the proposed unique arrangement for 2009 is unreasonable and unlawful because it provides compensation to AEP-Ohio for its POLR responsibilities when Ormet cannot shop under the contract. OCC and OEG claim that, because AEP-Ohio will not incur any risk that Ormet would leave and come back to system and seek service when the market makes it more economical, AEP-Ohio should not assess a POLR charge on Ormet, and ratepayers should not pay any discount which compensates AEP-Ohio for a non-existent POLR risk for this consumer.

AEP-Ohio argues that the Commission should not reopen its prior approval of the temporary amendment to the 2007-2008 contract between Ormet and AEP-Ohio. This temporary amendment was approved by the Commission effective January 1, 2009. AEP contends that, if the Commission approves the proposed unique arrangement, the unique arrangement should be effective on a prospective basis only because an earlier effective date would violate the terms of the temporary amendment.

Staff notes that Ormet's rate for 2009, the first year of the agreement, would be fixed at either $38 per MWh or $34 per MWh, depending on the number of potlines in operation (OCC Ex. 3 at 6-7). Although Staff had previously recommended that the Commission bifurcate this proceeding and address calendar year 2009 separately, Staff recommends Commission approval of the terms for the first year of the unique arrangement.

The Commission finds that the terms of the unique arrangement for 2009 should be approved subject to the following modifications. With respect to price, the Commission orders AEP-Ohio to bill Ormet, for the balance of 2009, at a rate which, for all of calendar year 2009, averages $38.00 per MWh for the periods when Ormet was in full operation (i.e., six potlines), $35.00 per MWh for the periods when Ormet curtailed production to 4.6 potlines, and $34.00 per MWh for the periods when Ormet curtailed production to 4 potlines. This rate will ensure that Ormet will receive the benefits of the rates proposed for calendar year 2009 in its amended application without bifurcating the proceeding as originally proposed by Staff. Further, this rate is contingent upon Ormet maintaining employment levels at 900 employees for calendar year 2009 pursuant to Ormet's representations in the record of this proceeding (Ormet Ex. 11A at 5-6; Tr. III at 425).

However, with respect to the delta revenue for 2009, the Commission believes further proceedings are necessary regarding the recovery of delta revenues by AEP-Ohio for calendar year 2009. Therefore, the Commission authorizes AEP-Ohio to defer the delta revenues created by the unique arrangement for the remainder of calendar year 2009, and the Commission directs AEP-Ohio to file an application to recover the appropriate amounts of the deferrals authorized by the Commission in Case No. 08-1338-EL-AAM and the delta revenues for calendar year 2009.

The approved unique arrangement shall be effective for services rendered following the filing in this docket of an executed power agreement which conforms to the modifications ordered by the Commission in this Opinion and Order. Although the power agreement shall be effective for services rendered after the filing of an executed power agreement, the Commission retains the right, upon review of the executed power agreement, to order further revisions to the power agreement in order to ensure that the power agreement conforms to the modifications of the proposed unique arrangement ordered by the Commission in this Opinion and Order.

B. Terms of the Unique Arrangement for Calendar Years 2010 through 2018

For calendar years 2010 through 2018, the rate Ormet will pay under the proposed unique arrangement will be determined based upon schedules filed each year with the Commission. Each schedule would include an "indexed rate" and a "target price." The indexed rate would be the rate that Ormet could pay to produce the minimum cash flow necessary to sustain operations and pay its required legacy costs depending upon the LME price of aluminum. The target price will be the projected average price of aluminum for the calendar year as reported on the LME at which Ormet would be able to pay the AEP-Ohio tariff rate and still maintain the minimum cash flow necessary to maintain its operations and pay its required legacy costs. Under the proposed unique arrangement, the Commission may require an independent third-party review of each year's schedule at Ormet's expense.

When the LME price of aluminum is less than or equal to the target price, Ormet will pay the indexed rate. When the LME price of aluminum is greater than the target price, but not more than $300 per tonne above the target price, Ormet will pay 102 percent of the AEP-Ohio tariff rate. When the LME price is greater than $300 per tonne than the target price, Ormet will pay 105 percent of the AEP-Ohio tariff rate. At the end of each year, there will be a true-up to reconcile the projected LME prices for the year with the actual LME prices.

With respect to the terms of the unique arrangement for calendar years 2010 through 2018, intervenors in this proceeding and Staff have raised a number of specific arguments related to: (1) the proposed discount and delta revenue recovery; (2) potential delta revenue credits; (3) POLR charges; (4) deposit and advance payment requirements; and (5) the need for future review of the proposed unique arrangement. Although the Commission will approve the proposed unique arrangement, the Commission will order a number of modifications to the unique arrangement in order to address the issues raised by intervenors and Staff.

1) Proposed Discount and Delta Revenue Recovery

IEU-Ohio argues that the unique arrangement, if approved, would impose an excessive burden on other customers of AEP-Ohio. IEU-Ohio claims that, under the pricing formula contained in the proposed unique arrangement and assuming an AEP-Ohio tariff rate of $44.24 per MWh, Ormet would need to sell aluminum at $2,843 per tonne to avoid creating delta revenues; however, if Ormet sold aluminum in 2010 at $1,602 per tonne, which was the LME forward price as of April 29, 2009, delta revenues would amount to $283 million (OEG Ex. 1; OEG Ex. 6).

Likewise, OCC and OEG claim that the proposed unique arrangement is unreasonable because it fails to limit the delta revenues that ratepayers could be asked to pay. OCC and OEG note that any LME price less than $2,200 per tonne will result in Ormet being paid, in the form of a credit on its bill, to use electricity (Tr. I at 153; Tr. II at 297). As of May 1, 2009, the LME futures price for July 2010 was $1,602 per tonne (Tr. I at 150-155). OCC and OEG claim that, if the futures price for July 2010 accurately reflects the actual LME price for July 2010, Ormet will be paid $77.1 million to use power in 2010 (Tr. I at 153). OCC and OEG contend that there is no basis in law for the proposed unique arrangement and that Ormet has failed to provide any credible legal justification for requiring ratepayers to pay cash to a company beyond discounting rates to zero dollars. Therefore, OCC and OEG conclude that the proposed unique arrangement would not be reasonable without an appropriate floor for the rate Ormet will pay.

OCC and OEG note that, although the total impact of wages on the states of Ohio, West Virginia and Pennsylvania, if Ormet were to close, would be $195 million per year (Ormet Ex. 8 at 4), half of the employees and retirees identified in the amended application reside in Pennsylvania and West Virginia (Ormet Ex. 5 at 5), and a substantial amount of the tax revenues received from Ormet goes to West Virginia (Ormet Ex. 5 at 11-12). Thus, OCC and OEG conclude that Ormet's economic study should be discounted by 42 percent before it can be considered a relevant study on the Ohio economic impact of a potential closing by Ormet. OCC and OEG note that Staff recommended in the hearing that the amount of the rate discount be limited to $54 million per year and that the discount be phased out over the term of the contract (Staff Ex 2 at 3). However, OCC and OEG maintain that the limit should not exceed $32 million, the amount of wages of the Ohio workers at the Ormet plant.

Kroger argues that, when considering a proposed unique arrangement, the Commission must balance all costs of the proposed arrangement with the benefits of assuming those costs. Further, Kroger contends that, in order to avoid exposing ratepayers to unreasonable and unlimited risk, any unique arrangement approved by the Commission in this proceeding should include reasonable protections for AEP-Ohio ratepayers. Kroger believes that the reasonable protections should include a definitive limit on the cost that ratepayers are required to pay, by either limiting the discount Ormet receives to a certain percentage below AEP-Ohio's tariff rates or placing a dollar limit on the amount of delta revenues AEP-Ohio may recover annually from the unique arrangement.

AEP-Ohio believes that the amount of any discount to be provided to Ormet is a matter for the Commission's judgment. However, AEP-Ohio claims that, under Section 4905.31(E), Revised Code, AEP-Ohio must be provided full recovery of all delta revenues under the unique arrangement because the statute specifies that all costs of an economic development program or job retention program are recoverable by an electric utility, including all "revenue forgone."

Ormet claims that the potential harm predicted by the intervenors in this proceeding is speculative and based upon an unlikely worst case scenario. Ormet contends that the delta revenue calculations by OCC and OEG are based upon the erroneous assumption that current LME forward prices are reliable predictors of future LME prices and that future LME prices are likely to stay below $1,941 per tonne (OCC Ex. 3 at 11-12). However, Ormet contends that a more reliable projection predicts that aluminum prices will be near $2,000 per tonne by the end of 2009 (Ormet Ex. 9 at 1; Tr. I at 173-174). Ormet also claims that there are several additional factors that will lower its costs, and the need for rate discounts, over time; these factors include deleveraging through the proceeds raised by asset sales and internally-generated cash (Ormet Ex. 7 at 2), and reductions in Ormet's pension contributions beginning in 2013 (Tr. III at 434-436).

Staff argues that any unique arrangement approved by the Commission should contain a floor and a ceiling. The Staff believes that a price floor, below which a customer's payments cannot go, reflects the need to maintain the customer's incentive to operate efficiently and effectively. Staff maintains that a maximum reduction of 25 percent from the tariff rate is the appropriate balance, keeping the customer focused on efficiency but providing temporary assistance as well (Staff Ex. 2). This floor would result in a maximum rate discount of $54 million.

In addition, Staff argues that there should be a ceiling on the amount of delta revenue to be recovered from other ratepayers. Staff notes that the benefits of unique arrangements to other ratepayers are limited and that the ability of other ratepayers to pay for delta revenues is likewise limited. Staff believes that the primary benefit of the unique arrangement is the potential preservation of jobs in Ohio; thus, Staff argues that the cap on annual delta revenue recovery should be set initially at $54 million, which is the amount of Ormet's payroll. In addition, Staff recommends that the amount of any discount be reduced by 11 percent of the initial discount each year during the term of the unique arrangement.

Ormet argues that the $54 million cap proposed by Staff is insufficient. Although Ormet believes that the aluminum market will rebound, Ormet claims that this market is highly volatile and that any cap must address this volatility (Ormet Ex. 6 at 6-7). Ormet maintains that the $54 million cap proposed by Staff is inadequate given the volatility of the aluminum market. Ormet claims that, if the discount in any given year is not sufficient to keep Ormet in business, then the entire contract will fail and Ormet will likely need to curtail production at its Hannibal facility.

Moreover, Ormet contends that Staff's proposed cap is unreasonable and speculative. Ormet believes that Staff's proposed cap fails to consider what Ormet needs to operate or to balance the costs of discounts against Ormet's benefits to this state. Ormet also claims that Staff has provided no support for its position that a maximum reduction of 25 percent from the tariff rate is appropriate. Further, Ormet contends that Staff has not demonstrated that its proposed $54 million cap would enable Ormet to remain in business for the years 2010 through 2019.

The Commission agrees with Staff's position that, generally, unique arrangements must contain a floor, a minimum amount that the party seeking a unique arrangement should be required to pay, and a ceiling, a maximum amount of delta revenue which the ratepayers should be expected to pay. Ormet represents that it does not oppose the application of a cap or floor to its contract (Ormet Brief at 21).

With respect to a floor, Ormet proposes a number of different methods for establishing a floor, with a range of $93 million to $114 million as the maximum discount from tariff rates. This range includes the variable costs of production of the electricity consumed by Ormet, which testimony indicates would be approximately $90 million (Tr. I at 235; Staff Ex. 2A, Tr. IV. at 478-479, 491-492). On the other hand, Staff has proposed a floor in which Ormet would receive a maximum discount from tariff rates of $54 million. OCC and OEG propose a floor of $32 million, based upon the total wages paid to Ormet's employees who reside in this state.

Based upon the record in this case, the Commission finds that Ormet's rate should be determined as proposed in the unique arrangement, but with a floor, or maximum discount from tariff rates. Although the Commission does not agree with Staff's recommendation on the amount of the floor, this floor should be implemented in the manner proposed by Staff at the hearing (Staff Ex. 2). Moreover, the Commission is not persuaded by the arguments presented by OCC and OEG that the Commission should consider only the Ohio portions of the regional economy. All of the jobs which would be retained under the proposed unique arrangement are located in this state irrespective of where the employees reside. Further, neither OCC nor OEG presented any economic analysis regarding how much of the indirect benefits of Ormet's continuing to remain in operation advantage the residents of this state as opposed to other states.

Therefore, the Commission will modify the proposed unique arrangement to set the maximum rate discount at $60 million for calendar years 2010 and 2011. The Commission has based the floor upon the variable costs of production of the electricity consumed by Ormet at full capacity, which the testimony at hearing indicates would be approximately $90 million. However, testimony in the record also indicates that, at the time of the hearing, Ormet was in the process of curtailing production to 4 potlines (Tr. 1 at 70-71). This curtailment of operations should reduce Ormet's demand for electricity by approximately one-third; therefore, the Commission has reduced the estimate of the variable costs of production of the electricity of $90 million by one-third to $60 million. The Commission finds that this is an appropriate floor or maximum discount for Ormet. This floor will be subject to two adjustments: a flexible phase down and a reduction in the discount due to reductions in employment, both of which will be discussed below.

With respect to the ceiling, or the maximum amount ratepayers should be expected to pay in any given year, the Commission agrees with Staff and the intervenors that the ability of ratepayers to fund the recovery of delta revenues is not unlimited. Ormet contends that the Staff has not offered proof for its recommendation of what ratepayers can afford to pay. However, Ormet, not Staff nor the intervenors, has the burden of proof in this proceeding, and it is Ormet that has failed to present evidence contravening the Staff's expert testimony, which was based upon substantial experience in relevant utility matters in this state (Staff Ex. 1 at 1; Tr. II at 336-338; Tr. IV at 505). Therefore, the Commission will adopt Staff's recommendation of $54 million as the maximum amount of delta revenue which ratepayers should be expected to pay in a given year.

However, this will result in a potential differential of up to $6 million per year between the $60 million maximum discount from tariff rates for Ormet and the $54 million maximum in delta revenues which ratepayers can be expected to pay. AEP-Ohio will be authorized to defer this differential, with carrying costs equal to AEP-Ohio's long term cost of debt, during the term of the unique arrangement. During this time, all delta revenue credits attributable to above-tariff payments by Ormet, to be calculated as discussed below, will be first applied to reduce or eliminate the deferral and carrying charges before being applied to AEP-Ohio's economic development rider. At the end of the term of the unique arrangement, AEP-Ohio will be permitted to recover any remaining deferred amounts, including carrying charges, through its economic development rider.

With respect to the adjustments to the floor, or maximum rate discount, the Commission agrees with Staff's recommendation that the unique arrangement be modified to phase down the discount over time. Ormet represents that there are several additional factors that will lower its costs, and in turn the need for rate discounts, over time; these factors include deleveraging through the proceeds raised by asset sales and internally-generated cash (Ormet Ex. 7 at 2) and reductions in Ormet's pension contributions beginning in 2013 (Tr. III at 434-436, 457-458). Therefore, although the $60 million floor will be in effect for calendar years 2010 and 2011, the Commission finds that, for calendar year 2012, the floor should be reduced to $54 million; for calendar years 2013 through 2018, the remaining six years of the contract, the floor should be reduced each year by $10 million, until it phases out completely for calendar year 2018.

The Commission also acknowledges that the aluminum market is subject to a great deal of volatility and that the unique arrangement should address that volatility.

Therefore, for calendar year 2013 through 2018, Ormet may elect to use, in the current year, any unused portion of the floor from a previous year (or years). Ormet shall apply this election by providing written notice to AEP-Ohio and by filing such notice in this docket. For example, if, due to LME prices in 2014, Ormet only uses a discount of $28.75 million, leaving $6 million of the 2014 discount unused, Ormet may elect to increase the floor in calendar year 2015 (or 2016 through 2018) by the $6 million unused discount. In no event will an adjusted floor be permitted to exceed $54 million in any year between 2013 and 2018. This should assist Ormet in weathering any short-term swings in the LME market while ensuring that the floor, or maximum rate discount, phases out over the duration of the unique arrangement.

Second, the Commission notes that the primary purpose of the unique arrangement is to retain jobs rather than to boost worldwide aluminum production or to enrich Ormet's investors. Any rate discounts provided to Ormet must be directly related to Ormet maintaining certain levels of employment. The record in this case demonstrates Ormet cannot continue to employ 900 employees beyond 2009 with curtailed production (Tr. III at 425). Therefore, under the unique arrangement, Ormet will be required to maintain an employment level of full-time employees of 650. Ormet will be required to provide a monthly report to Staff and AEP-Ohio detailing its employment levels. The floor will be reduced each month by $10 million for every 50 employees below 650 full-time employees that were employed by Ormet for the previous month. This reduction will be in addition to any planned phase down of the floor discussed above.

2) <u>Potential Delta Revenue Credits</u>

Kroger argues that the unique arrangement must provide for a greater share in the benefits for AEP-Ohio ratepayers in the event that aluminum prices rise above the target price. Kroger claims that ratepayers are being asked to bear the risk of declining aluminum prices and, therefore, should receive a reasonable return in the event that aluminum prices rebound. Kroger does not believe that a potential five percent gain is sufficient to compensate ratepayers for these risks.

OCC and OEG also allege that, under the proposed unique arrangement, AEP-Ohio's ratepayers bear great risks related to the price of aluminum while receiving little benefit if the price of aluminum rises. OCC and OEG cite to the testimony of OCC witness Ibrahim that the proposed unique arrangement lacks symmetry regarding the risks and benefits born by AEP-Ohio's customers (OCC Ex. 3 at 14-15). OCC and OEG claim that, if aluminum prices double from the price when Dr. Ibrahim filed his testimony, the possible benefit to AEP-Ohio's ratepayers would only be $3.6 million to $8.9 million (OCC Ex. 3 at 15). On the other hand, if the futures price for July 2010 accurately reflects the actual LME price for July 2010, Ormet will be paid $77.1 million to use power in 2010 and ratepayers would be responsible for delta revenues of $281.1 million. OCC and OEG contend that this asymmetry is extremely disadvantageous to AEP-Ohio's ratepayers because these ratepayers will bear huge risks for delta revenues while the benefits are extremely unlikely and minimal compared to the risks. Consequently, OCC and OEG recommend that a reasonable symmetry would require Ormet to pay a rate that exceeds the tariff rate by $0.049 per MWh times 50 percent for each $1 per tonne when the actual LME price exceeds the target price. AEP-Ohio would receive delta revenue credits for the amount that Ormet pays in excess of tariff rates with a maximum delta revenue credit cap of $16.35 million per year.

Ormet contends that the proposed unique arrangement is designed to assure that Ormet is not unreasonably benefitted at the expense of AEP-Ohio's ratepayers. Ormet notes that the unique arrangement is designed to impose the minimum burden on ratepayers by providing for the minimum cash flow necessary to keep its Hannibal facility in operation and pay its required legacy costs; the unique proposed arrangement does not guarantee that Ormet will earn a profit or a particular rate of return. Further, Ormet notes that it has voluntarily offered to pay above-tariff rates when the LME price of aluminum is greater than the target price.

The Commission finds that the unique arrangement, as filed, contains insufficient potential benefits to ratepayers in relation to the risks which Ormet proposes the ratepayers bear. Further, the Commission notes that the record indicates that Ormet will be able to substantially reduce its pension fund obligations beginning in the future (Tr. III at 434-436). However, the Commission finds that this can be addressed by increasing the amounts that Ormet will pay when LME prices exceed the LME target price. Therefore, beginning in 2012, if the LME price is greater than the LME target price, but not more than $300 above the LME target price, Ormet will pay 104 percent of the AEP-Ohio tariff rate rather than 102 percent of the AEP-Ohio tariff rate. Assuming full operations at Ormet's facility, this will increase the Ormet's potential contribution to delta revenue credits to approximately $8.74 million per year from $4.37 million. Further, if the LME price is greater than $300 above the LME target price, Ormet will pay 108 percent of the AEP-Ohio tariff rate rather than 105 percent of the AEP-Ohio tariff rate. This will increase Ormet's potential contribution to delta revenue credits to approximately $17.48 million per year from $10.91 million.

The Commission finds that any amounts paid by Ormet in excess of AEP-Ohio's tariff rates should be considered as delta revenue credits. AEP-Ohio is directed to apply the delta revenue credits first to any deferred amounts, including carrying charges, of delta revenues. Any remaining delta revenue credits should be applied to AEP-Ohio's economic development rider.

3) POLR Charges

OCC and OEG claim that the proposed unique arrangement is unreasonable and unlawful because it compensates AEP-Ohio for POLR charges when Ormet cannot shop under the unique arrangement. Under terms of the proposed unique arrangement, AEP-Ohio would be the exclusive supplier to Ormet's Hannibal facility (Ormet Ex. 8, Attachment A at 8-9; Tr. I at 37; Tr. IV at 484). OCC and OEG reason that, since there is no risk that Ormet will shop generation service while the contract is in effect, there is no risk to AEP-Ohio that it will be called to serve as Ormet's provider-of-last-resort; therefore, a POLR charge should not be assessed upon Ormet, and the other ratepayers should not pay delta revenues for POLR charges.

Kroger also contends that POLR charges should be excluded from the amount of delta revenues recovered by AEP-Ohio. Kroger reasons that, because Ormet will be contractually obligated to receive electricity from AEP-Ohio under the proposed unique arrangement, there is no risk to AEP-Ohio that Ormet will purchase electricity from an alternative electric service supplier. Kroger claims that, under the proposed unique arrangement, AEP-Ohio would still receive compensation for being the POLR supplier without incurring POLR costs. Further, Kroger believes that AEP-Ohio should be required to share the cost of any discount to Ormet since AEP-Ohio benefits financially from continued Ormet operations.

AEP-Ohio argues that the POLR charges authorized in its electric security plan should not be reduced. AEP-Ohio notes that the policy of the State is to promote competitive generation markets and customer choice. Section 4928.02, Revised Code. AEP-Ohio believes that any Commission order keeping Ormet's load out of the competitive markets for ten years would conflict with that policy. Further, AEP-Ohio contends that the Commission has already determined, in its electric security plan proceeding, that a customer should not be able to give up its statutory right to obtain service from a competitive supplier in exchange for avoiding the POLR charge. Instead, the only opportunity for a customer to avoid the POLR charge is to switch to a competitive supplier and agree to pay market rates for generation upon any return to the electric utility. *In re Columbus Sothern Power Co. and Ohio Power Co.*, Case No. 08-917-EL-SSO et al., Opinion and Order (March 18, 2009) at 40.

The Commission finds that, under the terms of the unique arrangement, AEP-Ohio will be the exclusive supplier to Ormet (Tr. I at 37-38; Tr. IV at 484). Therefore, there is no risk that Ormet will shop for competitive generation and then return to AEP-Ohio's POLR service. If AEP-Ohio were to retain these charges, AEP-Ohio would be compensated for a service it would not be providing. Moreover, our decision in the AEP-Ohio electric security plan is inapplicable to this case because that holding addressed customers receiving service under AEP-Ohio's standard service offer rather than a customer receiving service under a unique arrangement specifically approved by the Commission. Therefore, the Commission finds that the unique arrangement should be modified such that any POLR charges paid by Ormet are used to reduce the AEP-Ohio's ratepayers' obligations under the unique arrangement. During the term of the unique arrangement, AEP-Ohio shall credit any POLR charges paid by Ormet to its economic development rider in order to reduce the impact of the unique arrangement on other ratepayers' bills.

4) Deposit and Advance Payment Provisions

IEU-Ohio observes that the proposed unique arrangement would shift all risk of a potential default by Ormet to AEP-Ohio's customers by relieving Ormet of its current obligation to provide a security deposit as long as AEP-Ohio is permitted to treat any defaulted amounts as delta revenue to be recovered from its customers (Ormet Ex. 8, Attachment A at 14). IEU-Ohio argues that there is no real offset to the costs as a result of shifting the default risks to the other ratepayers and that this is part of the excessive burden placed upon AEP-Ohio's ratepayers under the proposed unique arrangement.

Ormet claims that all it is seeking with respect to deposit and advance payment terms is a return to standard tariff terms (Tr. I at 124, 227). Ormet believes that these terms will benefit AEP-Ohio's other ratepayers. Ormet notes that the calculation of the rate that Ormet can afford to pay is based on the assumption that the cash deposit currently held by AEP-Ohio will be returned to Ormet, thereby increasing its cash flow. If this deposit is not returned, it will result in increasing the magnitude of the discount required and in increasing the delta revenues to be collected from ratepayers. Thus, Ormet claims that, if the deposit is returned, the certainty of lower delta revenues would offset any potential risk of default.

AEP-Oho argues that the provisions in the proposed unique arrangement regarding waiver of deposit and advanced payment should not be modified. AEP avers that any modification would jeopardize the ability of AEP-Ohio to recover any unpaid amounts.

The Commission finds that the provisions related to deposit and advance payments should not be modified. The record clearly demonstrates that these provisions are an essential element of the proposed unique arrangement (Ormet Ex. 11A at 3, 4). Further, the record also demonstrates that Ormet has curtailed its operations, which will result in less ratepayer exposure to the risk of default by Ormet.

5) Future Review of the Proposed Unique Arrangement

In addition, IEU-Ohio claims that the proposed unique arrangement would prohibit the Commission and other stakeholders from seeking to modify the unique arrangement, except in very limited circumstances, while allowing Ormet to request modifications that would further benefit Ormet. Likewise, OCC and OEG claim that the proposed unique arrangement would unlawfully limit the Commission's jurisdiction to review and modify the agreement. Kroger also states that the Commission must have the ability to periodically review and, if necessary, modify the unique arrangement. Further, Kroger claims that ten years is an unreasonable amount of time to expose ratepayers to the risk and cost of a unique arrangement; thus there must be a reasonable time limit on the unique arrangement. Staff agrees that there should be some limit upon the length of the unique agreement. Thus, Staff believes that there should be periodic reviews of whether the unique agreements should continue.

The Commission believes that the provisions contained in the proposed unique arrangement for future review will be adequate to safeguard ratepayers from undue risks if supplemented by an additional, independent provision. The Commission notes that Ormet has repeatedly, throughout this proceeding, represented to the Commission its belief that, in the long-term, LME prices will recover sufficiently for Ormet to profitably operate. Ormet has disparaged the use of futures prices by OCC and OEG to predict future LME prices and has argued instead that the Commission should rely instead upon an analyst report which predicts a future rise in LME prices (Ormet Ex. 9 at 14).

Therefore, the Commission will modify the unique arrangement to provide an additional, independent, termination provision in the event that long-term LME prices do not recover as Ormet predicts. The Commission, above, has determined that, for calendar years 2010 and 2011, AEP should be permitted to defer for future recovery the differential between the floor, or maximum discount, of $60 million and the ceiling of $54 million. The Commission will modify the proposed unique arrangement to allow the Commission to terminate, by order, the unique arrangement if Ormet does not begin to reduce the amount of the accumulated deferrals, and carrying charges, through the payment of above-tariff rates, pursuant to the terms of the unique arrangement, by April 1, 2012. The Commission specifically notes that the crediting of POLR charges by AEP in the form of delta revenue credits shall not constitute the payment of above-tariff rates by Ormet for purposes of this termination provision. Unless otherwise ordered by the Commission, such termination shall be effective immediately upon issuance of a Commission order terminating the unique arrangement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) On February 17, 2009, Ormet filed an application pursuant to Section 4905.31, Revised Code, to establish a unique arrangement with AEP-Ohio for electric service to its aluminum-producing facility located in Hannibal, Ohio.

(2) Ormet filed an amended application on April 10, 2009.

(3) Comments regarding Ormet's application and amended application were filed by IEU-Ohio, OEG, and Kroger.

(4) Based upon the comments, the attorney examiner set this matter for hearing before the Commission.

(5) The hearing in this matter commenced on April 30, 2009, and concluded on June 17, 2009.

(6) The amended application is reasonable and should be approved as modified by the Commission.

ORDER:

It is, therefore,

ORDERED, That the amended application for a unique arrangement filed by Ormet be approved as modified by the Commission. It is, further,

ORDERED, That Ormet and AEP-Ohio file an executed power agreement in this docket that conforms to the modifications ordered by the Commission. It is, further,

ORDERED, That the approved unique arrangement shall be effective for services rendered following the filing in this docket of an executed power agreement. It is, further,

ORDERED, That AEP-Ohio be authorized to defer delta revenues for the remainder of calendar year 2009 and for calendar years 2010 and 2011, to the extent set forth in this Opinion and Order. It is, further, ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

GAP:ct

Entered in the Journal
JUL 15 2009

Reneé J. Jenkins
Secretary

4903.12 Jurisdiction.

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

Effective Date: 10-01-1953

4905.22 Service and facilities required - unreasonable charge prohibited.

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

Effective Date: 10-01-1953

4905.30 [Effective Until 9/13/2010] Printed schedules of rates must be filed.

Every public utility shall print and file with the public utilities commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. Such schedules shall be plainly printed and kept open to public inspection. The commission may prescribe the form of every such schedule, and may prescribe, by order, changes in the form of such schedules. The commission may establish and modify rules and regulations for keeping such schedules open to public inspection. A copy of such schedules, or so much thereof as the commission deems necessary for the use and information of the public, shall be printed in plain type and kept on file or posted in such places and in such manner as the commission orders.

Effective Date: 10-01-1953

This section is set out twice. See also § 4905.30, as amended by 128th General Assembly File No. 43, SB 162, § 1, eff. 9/13/2010.

4905.30 [Effective 9/13/2010] Printed schedules of rates must be filed

(A) A public utility shall print and file with the public utilities commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. The schedules shall be plainly printed and kept open to public inspection. The commission may prescribe the form of every such schedule, and may prescribe, by order, changes in the form of such schedules. The commission may establish and modify rules and regulations for keeping such schedules open to public inspection. A copy of the schedules, or so much thereof as the commission deems necessary for the use and information of the public, shall be printed in plain type and kept on file or posted in such places and in such manner as the commission orders.

(B) Division (A) of this section applies to a telephone company only regarding rates, joint rates, tolls, classifications, charges, rules, and regulations established pursuant to sections 4905.71, 4927.12, 4927.13, 4927.14, 4927.15, 4927.18, and 4931.47 of the Revised Code.

Amended by 128th General Assembly File No. 43, SB 162, § 1, eff. 9/13/2010.

Effective Date: 10-01-1953

This section is set out twice. See also § 4905.30, effective until 9/13/2010.

sion shall examine Ohio coal research and development costs incurred by a gas or natural gas company. The commission shall adopt a rule that:

(A) Requires periodic reports, audits, and hearings and establishes investigative procedures for the purposes of this section;

(B) Allows recovery on a uniform basis per unit of sale of the Ohio coal research and development costs incurred by a gas or natural gas company;

(C) Requires the reporting of such data by gas and natural gas companies as the commission considers necessary for the purposes of this section.

HISTORY: 141 v H 750. Eff 4-5-86.

Cross-References to Related Sections

Review of coal research and development projects; recommendation to allow recovery of costs, RC § 1551.33.

Technical advisory committee for coal development to review research projects, loans and grants, RC § 1551.35.

Valuation report; cost of property to exclude cost of coal research project, facility, RC § 4909.05.

Ohio Administrative Code

Ohio coal research and development rate. OAC ch. 4901:1-12.

Research Aids

Examination of coal research and development costs:
O-Jur3d: Pub Util § 20

§ 4905.31 Reasonable arrangements allowed; variable rate.

Except as provided in section 4933.29 of the Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code do not prohibit a public utility from filing a schedule or entering into any reasonable arrangement with another public utility or with its customers, consumers, or employees providing for:

(A) The division or distribution of its surplus profits;

(B) A sliding scale of charges, including variations in rates based upon either of the following:

(1) Stipulated variations in cost as provided in the schedule or arrangement;

(2) Any emissions fee levied upon an electric light company under Substitute Senate Bill No. 359 of the 119th general assembly as provided in the schedule. The public utilities commission shall permit an electric light company to recover the emissions fee pursuant to such a variable rate schedule.

(3) Any emissions fee levied upon an electric light company under division (C) or (D) of section 3745.11 of the Revised Code as provided in the schedule. The public utilities commission shall permit an electric light company to recover any such emission fee pursuant to such a variable rate schedule.

(4) Any schedule of variable rates filed under division (B) of this section shall provide for the recovery of any such emissions fee by applying a uniform percentage increase to the base rate charged each customer of the electric light company for service during the period that the variable rate is in effect.

(C) A minimum charge for service to be rendered unless such minimum charge is made or prohibited by the terms of the franchise, grant, or ordinance under which such public utility is operated;

(D) A classification of service based upon the quantity used, the time when used, the purpose for which used, the duration of use, and any other reasonable consideration;

(E) Any other financial device that may be practicable or advantageous to the parties interested. No such arrangement, sliding scale, minimum charge, classification, variable rate, or device is lawful unless it is filed with and approved by the commission.

Every such public utility is required to conform its schedules of rates, tolls, and charges to such arrangement, sliding scale, classification, or other device, and where variable rates are provided for in any such schedule or arrangement, the cost data or factors upon which such rates are based and fixed shall be filed with the commission in such form and at such times as the commission directs. The commission shall review the cost data or factors upon which a variable rate schedule filed under division (B)(2) or (3) of this section is based and shall adjust the base rates of the electric light company or order the company to refund any charges that it has collected under the variable rate schedule that the commission finds to have resulted from errors or erroneous reporting. After recovery of all of the emissions fees upon which a variable rate authorized under division (B)(2) or (3) of this section is based, collection of the variable rate shall end and the variable rate schedule shall be terminated.

Every such arrangement, sliding scale, minimum charge, classification, variable rate, or device shall be under the supervision and regulation of the commission, and is subject to change, alteration, or modification by the commission.

HISTORY: GC § 614-17; 102 v 549, § 19; 112 v 266; Bureau of Code Revision, 10-1-53; 136 v H 579 (Eff 12-21-75); 138 v S 88 (Eff 1-16-80); 138 v H 21 (Eff 7-2-80); 144 v S 359 (Eff 12-22-92); 145 v S 153. Eff 10-29-93.

Cross-References to Related Sections

Energy conservation programs, RC § 4905.70.

Minimum heating value of natural gas, RC § 4933.06.

Nonfirm electric service defined, RC § 4928.01.

Procedure for terminating residential service, RC § 4933.12.2.

Service offering for nonfirm electric service customers, RC § 4928.44.

Ohio Administrative Code

Applicability of uniform purchased gas adjustment to certain rate schedules. OAC 4901:1-14-03.

Research Aids

Public utility's rate arrangements:
O-Jur3d: Energy §§ 50, 95; Pub Util §§ 151, 152
Am-Jur2d: Pub Util §§ 79-87
C.J.S.: Pub Util §§ 15-22, 34-43

West Key No. Reference
Pub Util 119-130

ALR

Public service commission's implied authority to order refund of public utility revenues. 41 ALR5th 783.

4909.17 [Effective Until 9/13/2010] Approval required for change in rate.

No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the public utilities commission, by order, determines it to be just and reasonable, except as provided in this section and sections 4909.18 and 4909.19 of the Revised Code. Such sections do not apply to any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of railroads, street and electric railways, motor transportation companies, telegraph companies, and pipe line companies. Any change of any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of telegraph companies, may be made in the same manner as such changes may be made by railroad companies. All laws respecting such changes by railroad companies apply to such changes by telegraph companies.

Effective Date: 10-01-1953

This section is set out twice. See also § 4909.17, as amended by 128th General Assembly File No. 43, SB 162, § 1, eff. 9/13/2010.

4909.17 [Effective 9/13/2010] Approval required for change in rate

No rate, joint rate, toll, classification, charge, or rental, no change in any rate, joint rate, toll, classification, charge, or rental, and no regulation or practice affecting any rate, joint rate, toll, classification, charge, or rental of a public utility shall become effective until the public utilities commission, by order, determines it to be just and reasonable, except as provided in this section and sections 4909.18 and 4909.19 of the Revised Code. Such sections do not apply to any rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, of railroads, street and electric railways, motor transportation companies, and pipe line companies.

Amended by 128th General Assembly File No. 43, SB 162, § 1, eff. 9/13/2010.

Effective Date: 10-01-1953

This section is set out twice. See also § 4909.17, effective until 9/13/2010.

4909.42 Commission fails to issue timely order.

If the proceeding on an application filed with the public utilities commission under section 4909.18 of the Revised Code by any public utility requesting an increase on any rate, joint rate, toll, classification, charge, or rental or requesting a change in a regulation or practice affecting the same has not been concluded and an order entered pursuant to section 4909.19 of the Revised Code at the expiration of two hundred seventy-five days from the date of filing the application, the proposed increase shall go into effect upon the filing of an undertaking by the public utility. The undertaking shall be filed with the commission and shall be payable to the state for the use and benefit of the customers affected by the proposed increase or change. The undertaking must be signed by two of the officers of the utility, under oath, and must contain a promise to refund any amounts collected by the utility over the rate, joint rate, toll, classification, charge, or rental, as determined in the final order of the commission. All refunds shall include interest at the rate stated in section 1343.03 of the Revised Code. The refund shall be in the form of a temporary reduction in rates following the final order of the commission, and shall be accomplished in such manner as shall be prescribed by the commission in its final order. The commission shall exercise continuing and exclusive jurisdiction over such refunds. If the public utilities commission has not entered a final order within five hundred forty-five days from the date of the filing of an application for an increase in rates under section 4909.18 of the Revised Code, a public utility shall have no obligation to make a refund of amounts collected after the five hundred forty-fifth day which exceed the amounts authorized by the commission's final order. Nothing in this section shall be construed to mitigate any duty of the commission to issue a final order under section 4909.19 of the Revised Code.

Effective Date: 07-06-2001

4928.144 Phase-in of electric distribution utility rate or price.

The public utilities commission by order may authorize any just and reasonable phase-in of any electric distribution utility rate or price established under sections 4928.141 to 4928.143 of the Revised Code, and inclusive of carrying charges, as the commission considers necessary to ensure rate or price stability for consumers. If the commission's order includes such a phase-in, the order also shall provide for the creation of regulatory assets pursuant to generally accepted accounting principles, by authorizing the deferral of incurred costs equal to the amount not collected, plus carrying charges on that amount. Further, the order shall authorize the collection of those deferrals through a nonbypassable surcharge on any such rate or price so established for the electric distribution utility by the commission.

Effective Date: 2008 SB221 07-31-2008

000000179

4901:1-35-01 Definitions.

(A) "Application" means an application for standard service offer pursuant to this chapter.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Competitive bidding process" means a bidding process established pursuant to section 4928.142 of the Revised Code.

(D) "Dynamic retail pricing" means a retail rate design which includes prices that can change based on changes in wholesale electricity prices, power system conditions, or the marginal cost of providing electric service.

(E) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.

(F) "Electric security plan" means an electric utility plan for the supply and pricing of electric generation service including other related matters pursuant to section 4928.143 of the Revised Code.

(G) "First application for a market rate offer" means the application filed under section 4928.142 of the Revised Code by an electric utility that has not previously implemented an approved market-rate offer.

(H) "Market development period" shall have the meaning set forth in division (A)(17) of section 4928.01 of the Revised Code.

(I) "Market-rate offer" means an electric utility plan for the supply and pricing of electric generation service pursuant to section 4928.142 of the Revised Code.

(J) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.

(K) "Rate plan" means an electric utility's standard service offer approved by the commission prior to January 1, 2009, that established rates for electric service at the expiration of an electric utility's market development period.

(L) "Standard service offer" means an electric utility offer to provide consumers, on a comparable and nondiscriminatory basis within its certified territory, all competitive retail electric services necessary to maintain essential electric service to consumers, including a firm supply of electric generation service.

(M) "Staff" means the staff of the commission or its authorized representatives.

(N) "Time differentiated pricing" means a retail rate design which includes differing prices based upon the time that electricity is used in order to reflect differences in expected costs or wholesale electricity prices in different time periods.

Replaces: 4901:1-35-01

000000180

Effective: 05/07/2009

R.C. 119.032 review dates: 09/30/2013

Promulgated Under: 111.15

Statutory Authority: 4928.06, 4928.141

Rule Amplifies: 4928.14, 4928.141, 4928.142, 4928.143

Prior Effective Dates: 5/27/04

4901:1-38-01 Definitions.

(A) "Affidavit" means a written declaration made under oath before a notary public or other authorized officer.

(B) "Commission" means the public utilities commission of Ohio.

(C) "Delta revenue" means the deviation resulting from the difference in rate levels between the otherwise applicable rate schedule and the result of any reasonable arrangement approved by the commission.

(D) "Electric utility" shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.

(E) "Energy efficiency production facilities" means any customer that manufactures or assembles products that promote the more efficient use of energy (i.e., increase the ratio of energy end use services (i.e., heat, light, and drive power) derived from a device or process to energy inputs necessary to derive such end use services as compared with other devices or processes that are commonly installed to derive the same energy use services); or, any customer that manufactures, assembles or distributes products that are used in the production of clean, renewable energy.

(F) "Mercantile customer" shall have the meaning set forth in division (A)(19) of section 4928.01 of the Revised Code.

(G) "Nonfirm electric service" means electric service provided pursuant to a schedule filed under section 4905.30 or 4928.141 of the Revised Code, or pursuant to an arrangement under section 4905.31 of the Revised Code, which schedule or arrangement includes conditions that may require the customer to curtail or interrupt electric usage during nonemergency circumstances upon notification by the electric utility.

(H) "Staff" means the staff of the commission or its authorized representative.

Effective: 04/02/2009

R.C. 119.032 review dates: 09/30/2013

Promulgated Under: 111.15

Statutory Authority: 4905.04, 4905.06

Rule Amplifies: 4905.31, 4928.02